IN THE

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA

No. 9748

STATE AIRLINES, INCORPORATED, a Corporation,
Petitioner,

v.

CIVIL AERONAUTICS BOARD,
Respondent,

PIEDMONT AVIATION, INCORPORATED,
Intervenor.

PETITION FOR REVIEW OF ORDERS OF THE CIVIL AERONAUTICS BOARD

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862838—49——1

BEFORE THE

CIVIL AERONAUTICS BOARD

DATED: OCTOBER 19, 1943

In the Matter of the Application of STATE AIRLINES, INC. Charlotte, N. C. for a permanent certificate of public convenience and necessity under Section 401 of the Civil Aeronautics Act of 1938 authorizing the air transportation of persons, property and mail in scheduled operations as follows:	Docket No. 1114

SCOPE OF APPLICATION

I. Between Detroit, Mich. and Wilmington, N. C. via Huntington, W. Va., Roanoke, Va., and certain intermediate points.

II. Between Detroit, Mich. and Jacksonville, Fla. via Huntington, W. Va., Roanoke, Va., and certain intermediate points.

III. Between Detroit, Mich. and Jacksonville, Fla. via Huntington, W. Va., Asheville, N. C., and certain intermediate points.

IV. Between Louisville, Ky. and Wilmington, N. C. via Winston-Salem, N. C., and certain intermediate points.

V. Between Cincinnati, Ohio and Charleston, S. C. via Charlotte, N. C., and certain intermediate points.

VI. Between New Bern, N. C. and Meridian, Miss. via Raleigh, N. C., Charlotte, N. C., Augusta, Ga., Macon, Ga., and certain intermediate points.

VII. Between Louisville, Ky. and Jacksonville, Fla. via Asheville, N. C., Greenville, S. C., Columbia, S. C., and certain intermediate points.

VIII. To or between such other terminal or intermediate points adjacent to those mentioned in this application.

Address all Communications To:

Henry K. Gilbert, Jr.
President, State Airlines, Inc.
P.O. Box 1862,
Charlotte, N. C.

Wilmer A. Hill
Transportation Building
Washington, D. C.
Counsel for Applicant

[R. 118]

BEFORE THE

CIVIL AERONAUTICS BOARD

In the Matter of the Application of STATE AIRLINES, INC. Charlotte, N. C. for a permanent certificate of public convenience and necessity under Section 401 of the Civil Aeronautics Act of 1938	Docket No. 1114

1. The full name and address of the Applicant is State Airlines, Inc. Charlotte, N. C. Applicant is a corporation, organized under the laws of the State of Delaware, with its principal office located at Charlotte, North Carolina.

2. Applicant is a citizen of the United States as defined in Section 1 (13) of the Civil Aeronautics Act of 1938; its president, directors and officers are citizens of the United States, and over seventy-five percent of its voting interest is owned and controlled by citizens of the United States.

3. Applicant hereby applies for a permanent certificate of public convenience and necessity authorizing the air transportation of passengers, property, and mail between the following points:

[R. 119]

I. Between the terminal points Detroit, Mich. and Wilmington, N. C.

	Air Miles	Total	Over-all Distance
Detroit, Mich.			
Toledo, Ohio	63		
Findlay, Ohio	38		
Marion, Ohio	39		
Columbus, Ohio	44	184	
Chillecothe, Ohio	54		
Portsmouth, Ohio	35		
Huntington, W. Va.	43		
Charleston, W. Va.	39	171	
Beckley, W. Va.	51		
Princeton-Bluefield, W. Va.	31		
Roanoke, Va.	62	144	
Danville, Va.	63		
Durham-Raleigh, N. C.	59	122	
Fayetteville, N. C.	49		
Wilmington, N. C.	81	120	741

II. Between the terminal points Detroit, Mich. and Jacksonville, Fla.

	Air Miles	Total	Over-all Distance
Detroit, Mich.			
Toledo, Ohio	63		
Findlay, Ohio	38		
Marion, Ohio	39		
Columbus, Ohio	44	184	
Chillecothe, Ohio	54		
Portsmouth, Ohio	35		
Huntington, W. Va.	43		
Charleston, W. Va.	39	171	
Beckley, W. Va.	51		
Princeton-Bluefield, W. Va.	31		
Roanoke, Va.	62	144	

	Air Miles	Total	Over-all Distance
Greensboro, N. C.	84		
Winston-Salem, N. C.	15		
Salisbury, N. C.	38		
Charlotte, N. C.	37	179	
Rock Hill, S. C.	25		
Columbia, S. C.	64		
Savannah, Ga.	136		
Brunswick, Ga.	61		
Jacksonville, Fla.	53	339	1,017

[R. 120]

III. Between the terminal points Detroit, Mich. and Jacksonville, Fla.

	Air Miles	Total	Over-all Distance
Detroit, Mich.			
Toledo, Ohio	63		
Findlay, Ohio	38		
Marion, Ohio	39		
Columbus, Ohio	44	184	
Chillecothe, Ohio	54		
Portsmouth, Ohio	35		
Huntington, W. Va.	43	132	
Bristol (Tri-City), Va./Tenn.	135		
Asheville, N. C.	71		
Greenville, S. C.	42	248	
Anderson, S. C.	32		
Greenwood, S. C.	36		
Augusta, Ga.	51	119	
Waycross, Ga.	155		
Jacksonville, Fla.	70	225	908

IV. Between the terminal points Louisville, Ky. and Wilmington, N. C.

	Air Miles	Total	Over-all Distance
Louisville, Ky.			
Lexington, Ky.	66		
Bristol (Tri-City), Va./Tenn.	159		
Winston-Salem, N. C.	124	249	
Greensboro, N. C.	15		
Burlington, N. C.	31		
Durham-Raleigh, N. C.	39	85	
Fayetteville, N. C.	49		
Wilmington, N. C.	81	130	464

V. Between the terminal points Cincinnati, Ohio and Charleston, S. C.

	Air Miles	Total	Over-all Distance
Cincinnati, Ohio			
Lexington, Ky.	66		
Bristol (Tri-City), Va./Tenn.	159		
Hickory, N. C.	76		
Charlotte, N. C.	42	343	
Columbia, S. C.	86		
Charleston, S. C.	93	179	522

[R. 121]

VI. Between the terminal points New Bern, N. C. and Meridian, Miss.

	Air Miles	Total	Over-all Distance
New Bern, N. C.			
Goldsboro, N. C.	55		
Durham-Raleigh, N. C.	56		
Charlotte, N. C.	130	241	
Columbia, S. C.	86		
Augusta, Ga.	70	156	

	Air Miles	Total	Over-all Distance
Macon, Ga.	100		
Columbus, Ga.	91		
Montgomery, Ala.	81	272	
Selma, Ala.	37		
Meridian, Miss.	104	141	810

VII. Between the terminal points Louisville, Ky. and Jacksonville, Fla.

	Air Miles	Total	Over-all Distance
Louisville, Ky.			
Knoxville, Tenn.	190		
Asheville, N. C.	88	278	
Greensville, S. C.	42		
Spartanburg, S. C.	24		
Columbia, S. C.	83	149	
Orangeburg, S. C.	37		
Savannah, Ga.	100	137	
Brunswick, Ga.	61		
Jacksonville, Fla.	53	114	678

VIII. No request for a specific route or routes included herein is to be construed in such a manner as to prevent the Civil Aeronautics Board from allotting any other routes, including or dropping any terminal point, or changing in any manner any routes contained in this application, which the Board may find to be required by public convenience and necessity within the general area the Applicant desires to serve.

4. In accordance with the requirements of Section 238.1 of the Economic Regulations, there is attached to this application, marked "Exhibit A", a map showing all terminals and intermediate points to be served.

5. Applicant proposes to operate in this service aircraft similar to the so-called Lockheed Lodestar. However, the

[R. 122]

Applicant has under consideration, not only with the manu-

facturer of Lodestar equipment, but with other aircraft manufacturers, certain other aircraft which may be more suitable than the Lodestar for the particular services. If this proves to be the case, Applicant will, either before, or at the time of the hearing of this application, make suitable amendments thereto. Such aircraft are not presently owned by the Applicant.

6. The Applicant is an "air carrier" within the meaning of Section 1 (2) of the Civil Aeronautics Act of 1938, being engaged in the transportation of passengers and property in non-scheduled operations, principally within the area the Applicant desires to serve. The applicant has no affiliate, subsidiary, or principal stockholder engaged in any other form of transportation as a common carrier, or engaged in any other form of aeronautical activity.

7. The operations contemplated in this application will be to a great extent in the nature of a feeder service essentially local in character. As contrasted with long main-line operations, such service employing the maximum in frequency and proximity at convenient hours is required to enable round trips and multi-stop trips to the most frequently traveled points to be completed all within the same day. It is this character of operation which the Applicant has established over the past several years within the area encompassed by this application and proposes to foster as far as possible.

WHEREFORE, Applicant respectfully prays that the Civil Aeronautics Board, after due inquiry and investigation, issue to Applicant the above certificate of public convenience and necessity.

Respectfully submitted,

STATE AIRLINES, INC.

By: /s/ HENRY K. GILBERT, JR.
Henry K. Gilbert, Jr., President
and present Chief Operating Officer

[R. 123]

VERIFICATION

STATE OF NORTH CAROLINA }
COUNTY OF MECKLENBURG } ss.:

On this 18th day of October 1943, personally appeared Henry K. Gilbert, Jr., who subscribed his name hereto and made oath and said that (1) he is the President of the State Airlines, Inc., Applicant in the above proceeding; (2) he has read and is familiar with the contents of the foregoing Application; (3) he intends and desires that in granting or denying the rights and privileges herein applied for, the Civil Aeronautics Board shall place full and complete reliace on the accuracy of each and every statement herein contained; (4) he is familiar with the facts set forth in the foregoing Application and to the best of his information and belief, every statement is true and no such statement is misleading; (5) in his opinion said Application does not omit to state any facts known to him which would be deemed by said Board to be of importance to it in reaching its determination in connection therewith.

Before me

/s/ IRMA W. DIXON
Notary Public
expires January 27, 1945

SEAL

(R. 124)

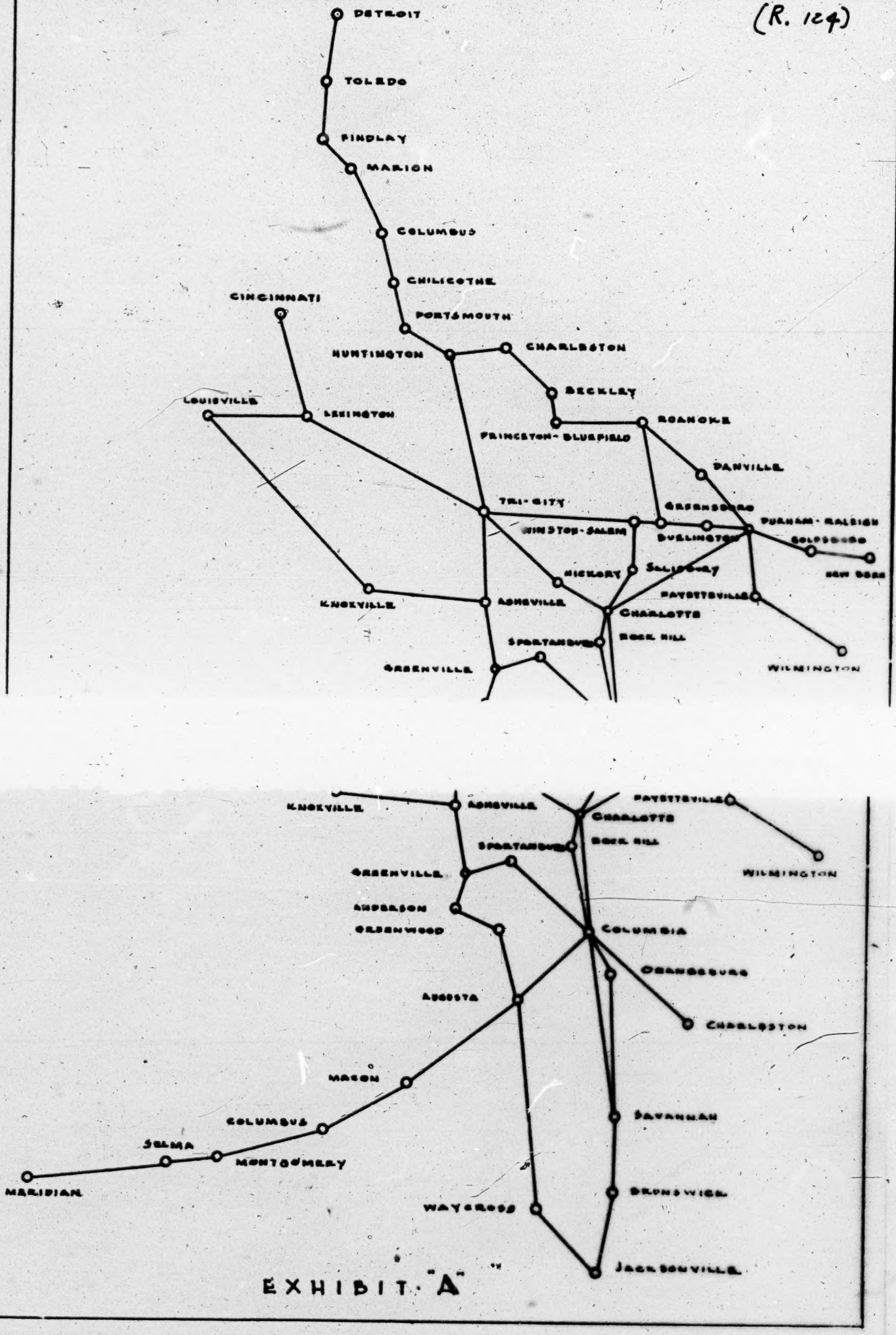

EXHIBIT "A"

BEFORE THE

CIVIL AERONAUTICS BOARD

DATED: JANUARY 22, 1945

In the Matter of the Application of STATE AIRLINES, INC. Charlotte, N. C. for a permanent and/or temporary certificate of public convenience and necessity under Section 401 of the Civil Aeronautics Act of 1938 authorizing the air transportation of persons, property and mail in scheduled operations as follows:	Docket No. 1711

SCOPE OF APPLICATION

I. Between Charlotte, N. C. and Chattanooga, Tenn. via certain intermediate points.

II. Between Norfolk, Va. and Columbia, S. C. via certain intermediate points.

III. Between Wilmington, N. C. and Montgomery, Ala. via certain intermediate points.

IV. Between Savannah, Ga. and Montgomery, Ala. via certain intermediate points.

V. To and between such other terminal or intermediate points adjacent to those mentioned in this application.

Address all Communications To:

Henry K. Gilber, Jr.	Wilmer A. Hill
President, State Airlines, Inc.	Transportation Building
P.O. Box 1862	Washington 6, D. C.
Charlotte 1, N. C.	Counsel for Applicant

[R. 305]

BEFORE THE

CIVIL AERONAUTICS BOARD

In the Matter of the Application of STATE AIRLINES, INC. Charlotte, N. C. for a permanent and/or temporary certificate of public convenience and necessity under Section 401 of the Civil Aeronautics Act of 1938 authorizing the air transportation of persons, property and mail in scheduled operations.	Docket No. 1711

1. The full name and address of the applicant is State Airlines, Inc., Charlotte, N. C. Applicant is a corporation, organized under the laws of the State of Delaware, with its principal office located at Charlotte, North Carolina.

2. Applicant is a citizen of the United States as defined in Section 1 (13) of the Civil Aeronautics Act of 1938; its president, directors and officers are citizens of the United States, and over seventy-five percent of its voting interest is owned and controlled by citizens of the United States.

3. Applicant hereby applies for a permanent certificate of public convenience and necessity authorizing the air transportation of passengers, property, and mail between the following points:

1. Between the terminal points Charlotte, N. C. and Chattanooga, Tenn.

	Air Miles	Over-all Distance
Charlotte, N. C.		
Rock Hill, S. C.	25	
Spartanburg, S. C.	52	
Greenville, S. C.	23	
Chattanooga, Tenn.	160	260

[R. 306]

II. Between the terminal points Norfolk, Va. and Columbia, S. C.

	Air Miles	Over-all Distance
Norfolk, Va.		
Elizabeth City, N. C.	44	
Greenville, N. C.	80	
Goldsboro, N. C.	40	
Fayetteville, N. C.	53	
Florence, S. C.	81	
Sumter, S. C.	42	
Columbia, S. C.	35	375

III. Between the terminal points Wilmington, N. C. and Montgomery, Ala

	Air Miles	Over-all Distance
Wilmington, N. C.		
Florence, S. C.	103	
Sumter, S. C.	42	
Columbia, S. C.	35	
Augusta, Ga.	40	
Macon, Ga.	100	
Columbus, Ga.	91	
Montgomery, Ala.	81	522

IV. Between the terminal points Savannah, Ga. and Montgomery, Ala.

	Air Miles	Over-all Distance
Savannah, Ga.		
Dublin, Ga.	110	
Macon, Ga.	43	
Columbus, Ga.	91	
Montgomery, Ala.	81	325

V. No request for a specific route or routes included herein is to be construed in such a manner as to prevent the Civil Aeronautics Board from allotting any other routes, including or dropping any terminal point, or changing in

any manner any routes contained in this application, which the Board may find to be required by public convenience and necessity within the general area the Applicant desires to serve.

[R. 307]

4. In accordance with the requirements of Section 238.1 of the Economic Regulations, there is attached to this application, marked "Exhibit A", a map showing all terminals and intermediate points to be served.

5. Applicant proposes to operate in this service aircraft of the most efficient type obtainable. Such aircraft are not presently owned by the Applicant.

6. The Applicant is an "Air carrier" within the meaning of Section 1 (2) of the Civil Aeronautics Act of 1938, being engaged in the transportation of passengers and property in non-scheduled operations, principally within the area the Applicant desires to serve. The Applicant has no affiliate, subsidiary, or principal stockholder engaged in any other form of transportation as a common carrier, or engaged in any other form of aeronautical activity.

WHEREFORE, Applicant respectfully prays that the Civil Aeronautics Board, after due inquiry and investigation, issue to Applicant the above certificate of public convenience and necessity.

Respectfully submitted,

STATE AIRLINES, INC.

By: /s/ HENRY K. GILBERT, JR.
Henry K. Gilbert, Jr., President
and present Chief Operating Officer

[R. 308]

VERIFICATION

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG } ss.:

On this 20th day of January 1945, personally appeared Henry K. Gilbert, Jr., who subscribed his name hereto and made oath and said that (1) he is the President of the State Airlines, Inc., Applicant in the above proceeding; (2) he has read and is familiar with the contents of the foregoing Application; (3) he intends and desires that in granting or denying the rights and privileges herein applied for, the Civil Aeronautics Board shall place full and complete reliance on the accuracy of each and every statement herein contained; (4) he is familiar with the facts set forth in the foregoing Application and to the best of his information and belief, every statement is true and no such statement is misleading; (5) in his opinion said Application does not omit to state any facts known to him which would be deemed by said Board to be of importance to it in reaching its determination in connection therewith.

Before me

/s/ MARY JO HILL
Notary Public
expires September 25, 1945

[SEAL]

(P.16)

(R.309)

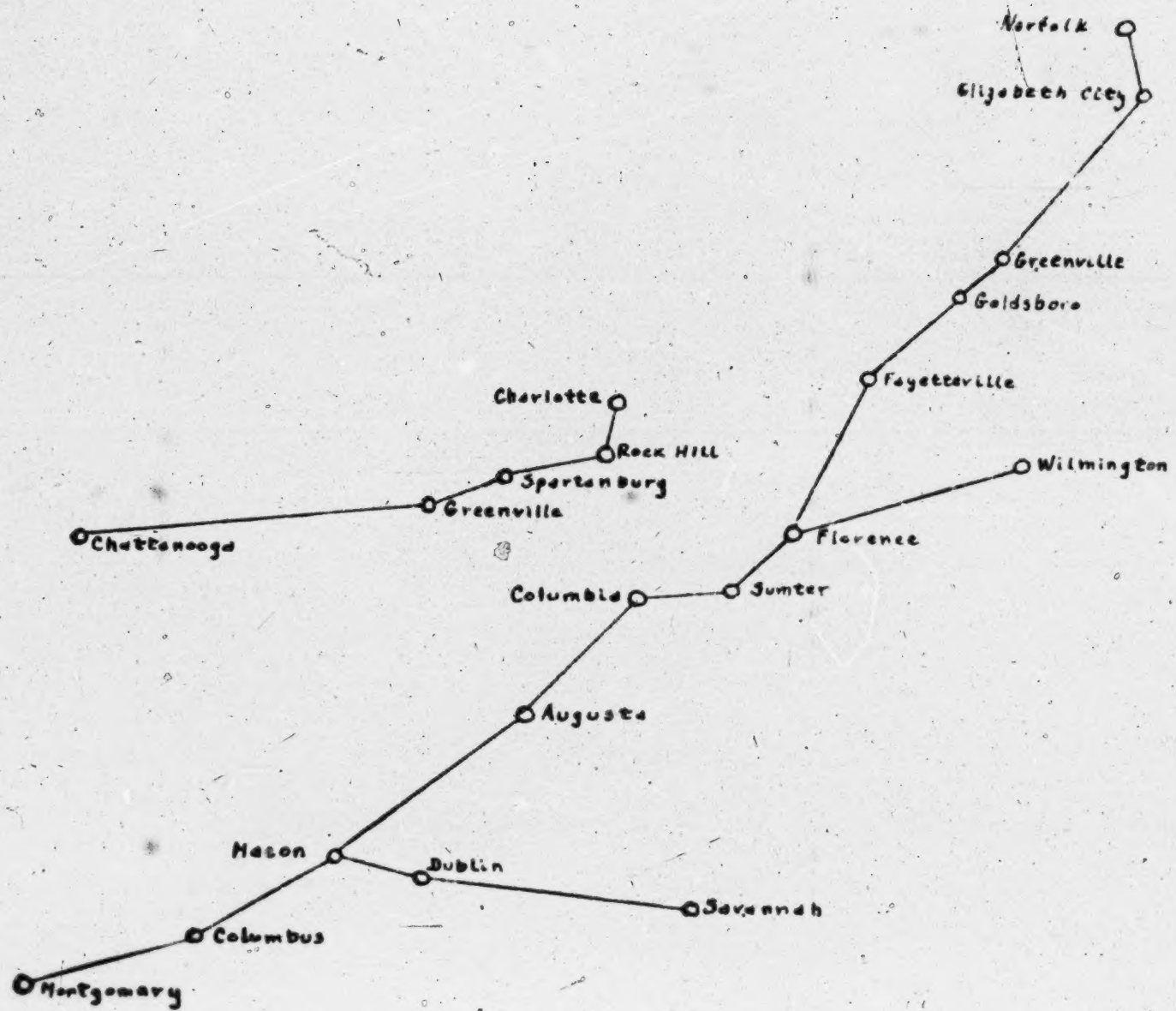

EXHIBIT A

BEFORE THE

CIVIL AERONAUTICS BOARD

DATED: JANUARY 30, 1945

In the Matter of the Application of STATE AIRLINES, INC. Charlotte, N. C. for a permanent and/or temporary certificate of public convenience and necessity under Section 401 of the Civil Aeronautics Act of 1938 authorizing the air transportation of persons, property and mail in scheduled operations as follows:	Docket No. 1723

SCOPE OF APPLICATION

I. Between Pittsburgh, Pa. and Jacksonville, Fla. via certain intermediate points.

II. Between Cincinnati, Ohio and Norfolk, Va. via certain intermediate points.

III. Between Louisville, Ky. and Wilmington, N. C. via Charlotte, N. C. and certain intermediate points.

IV. Between Detroit, Mich. and Wilmington, N. C. via certain intermediate points.

V. Between Detroit, Mich. and Jacksonville, Fla. via Roanoke, Va. and certain intermediate points.

VI. Between Detroit, Mich. and Jacksonville, Fla. via Asheville, N. C. and certain intermediate points.

VII. Between Louisville, Ky. and Wilmington, N. C. via Winston-Salem, N. C. and certain intermediate points.

VIII. Between Cincinnati, Ohio and Charleston, S. C. via certain intermediate points.

IX. Between New Bern, N. C. and Montgomery, Ala. via certain intermediate points.

X. Between Louisville, Ky. and Jacksonville, Fla. via certain intermediate points.

XI. Between Norfolk, Va. and Louisville, Ky. via certain intermediate points.

XII. To and between such other terminals or intermediate points adjacent to those mentioned in this application.

Address All Communications To:

Henry K. Gilbert, Jr.
President, State Airlines, Inc.
P. O. Box 1862
Charlotte 1, N. C.

Wilmer A. Hill
Transportation Building
Washington, D. C.
Counsel for Applicant

[R. 576]

BEFORE THE

CIVIL AERONAUTICS BOARD

In the Matter of the Application of STATE AIRLINES, INC. Charlotte, N. C. for a permanent and/or temporary certificate of public convenience and necessity under Section 401 of the Civil Aeronautics Act of 1938 authorizing the air transportation of persons, property and mail in scheduled operations as follows:	Docket No. 1723

1. The full name and address of the Applicant is State Airlines, Inc., Charlotte, N. C. Applicant is a corporation, organized under the laws of the State of Delaware, with its principal office located at Charlotte, North Carolina.

2. Applicant is a citizen of the United States as defined in Section 1 (13) of the Civil Aeronautics Act of 1938; its president, directors and officers are citizens of the United States, and over seventy-five percent of its voting interest is owned and controlled by citizens of the United States.

3. Applicant hereby applies for a permanent and/or temporary certificate of public convenience and necessity authorizing the air transportation of passengers, property, and mail between the following points:

[R. 577]

I. Between the terminal points Pittsburgh, Pa. and Jacksonville, Fla.

	Air Miles	Over-all Distance
Pittsburgh, Pa.		
Morgantown, W. Va.	49	
Clarksburg, W. Va.	30	
Elkins, W. Va.	35	
Covington-Clifton Forge, Va.	75	
Roanoke, Va.	33	
Greensboro, N. C.	84	
Winston-Salem, N. C.	15	
Salisbury, N. C.	38	
Charlotte, N. C.	37	
Rock Hill, S. C.	25	
Columbia, S. C.	64	
Savannah, Ga.	136	
Brunswick, Ga.	61	
Jacksonville, Fla.	53	735

II. Between the terminal points Cincinnati, Ohio and Norfolk, Va.

Cincinnati, Ohio		
Portsmouth, Ohio	80	
Huntington, W. Va.	43	
Charleston, W. Va.	39	
Beckley, W. Va.	51	
Princeton-Bluefield, W. Va.	31	
Roanoke, Va.	62	
Lynchburg, Va.	43	
Petersburg, Va.	92	
Richmond, Va.	18	
Norfolk, Va.	82	541

III. Between the terminal points Louisville, Ky. and Wilmington, N. C.

Louisville, Ky.		
Knoxville, Tenn.	190	
Asheville, N. C.	88	
Charlotte, N. C.	90	
Pinehurst-Southern Pines, N. C.	87	
Fayetteville, N. C.	30	
Wilmington, N. C.	81	566

[R. 578]

IV. Between the terminal points Detroit, Mich. and Wilmington, N. C.

	Air Miles	Over-all Distance
Detroit, Mich.		
Toledo, Ohio	63	
Findlay, Ohio	38	
Marion, Ohio	39	
Columbus, Ohio	44	
Chillicothe, Ohio	54	
Portsmouth, Ohio	35	
Huntington, W. Va	43	
Charleston, W. Va	39	
Beckley, W. Va.	51	
Princeton-Bluefield, W. Va.	31	
Roanoke, Va.	62	
Danville, Va.	63	
Durham-Raleigh, N. C.	59	
Fayetteville, N. C.	49	
Wilmington, N.C.	81	751

V. Between the terminal points Detroit, Mich. and Jacksonville, Fla.

Detroit, Mich.		
Toledo, Ohio	63	
Findlay, Ohio	38	
Marion, Ohio	39	
Columbus, Ohio	44	
Chillicothe, Ohio	54	
Portsmouth, Ohio	35	
Huntington, W. Va.	43	
Charleston, W. Va.	39	
Beckley, W. Va.	51	
Princeton-Bluefield, W. Va.	31	
Roanoke, Va.	62	
Greensboro, N. C.	84	
Winston-Salem, N. C.	15	
Salisbury, N. C.	38	
Charlotte, N. C.	37	
Rock Hill, S. C.	25	
Columbia, S. C.	64	
Savannah, Ga.	136	
Brunswick, Ga.	61	
Jacksonville, Fla.	53	1,012

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VI. Between the terminal points Detroit, Mich. and Jacksonville, Fla.

	Air Miles	Over-all Distance
Detroit, Mich.		
Toledo, Ohio	63	
Findlay, Ohio	38	
Marion, Ohio	39	
Columbus, Ohio	44	
Chillicothe, Ohio	54	
Portsmouth, Ohio	35	
Huntington, W. Va.	43	
Bristol (Tri-City), Va./Tenn.	135	
Asheville, N. C.	71	
Greenville, S. C.	42	
Anderson, S. C.	32	
Greenwood, S. C.	36	
Augusta, Ga.	51	
Waycross, Ga.	155	
Jacksonville, Fla.	70	908

VII. Between the terminal points Louisville, Ky. and Wilmington, N. C.

Louisville, Ky.		
Lexington, Ky.	66	
Bristol (Tri-City), Va./Tenn.	159	
Winston-Salem, N. C.	124	
Greensboro, N. C.	15	
Burlington, N. C.	31	
Durham-Raleigh, N. C.	39	
Fayetteville, N. C.	49	
Wilmington, N. C.	81	564

VIII. Between the terminal points Cincinnati, Ohio and Charleston, S. C.

Cincinnati, Ohio		
Lexington, Ky.	66	
Bristol (Tri-City), Va./Tenn.	159	
Hickory, N. C.	76	
Charlotte, N. C.	42	
Columbia, S. C.	86	
Charleston, S. C.	93	522

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IX. Between the terminal points New Bern, N. C. and Montgomery, Ala.

	Air Miles	Over-all Distance
New Bern, N. C.		
Goldsboro, N. C.	55	
Durham-Raleigh, N. C.	56	
Charlotte, N. C.	130	
Columbia, S. C.	86	
Augusta, Ga.	70	
Macon, Ga.	100	
Columbus, Ga.	91	
Montgomery, Ala.	81	669

X. Between the terminal points Louisville, Ky. and Jacksonville, Fla.

Louisville, Ky.		
Knoxville, Tenn.	190	
Asheville, N. C.	88	
Greenville, S. C.	42	
Spartanburg, S. C.	24	
Columbia, S. C.	83	
Orangeburg, S. C.	37	
Savannah, Ga.	100	
Brunswick, Ga.	61	
Jacksonville, Fla.	53	678

XI. Between the terminal points Norfolk, Va. and Louisville, Ky.

Norfolk, Va.		
Richmond, Va.	82	
Petersburg, Va.	18	
Lynchburg, Va.	92	
Roanoke, Va.	43	
Princeton-Bluefield, W. Va.	62	
Lexington, Ky.	190	
Louisville, Ky.	66	553

XII. No request for a specific route or routes included herein is to be construed in such a manner as to prevent the

Civil Aeronautics Board from allotting any other routes, including or dropping any terminal point, or changing in any manner any routes contained in this application, which the Board may find to be required by public convenience and necessity within the general area the Applicant desires to serve.

[R. 581]

4. In accordance with the requirements of Section 238.1 of the Economic Regulations, there is attached to this application, marked "Exhibit A", a map showing all terminals and intermediate points to be served.

5. Applicant proposes to operate in this service aircraft of the most efficient type obtainable. Such aircraft are not presently owned by the Applicant.

6. The Applicant is an "air carrier" within the meaning of Section 1 (2) of the Civil Aeronautics Act of 1938, being engaged in the transportation of passengers and property in non-scheduled operations, principally within the area the Applicant desires to serve. The Applicant has no affiliate, subsidiary, or principal stockholder engaged in any other form of transportation as a common carrier, or engaged in any other form of aeronautical activity.

WHEREFORE, Applicant respectfully prays that the Civil Aeronautics Board, after due inquiry and investigation, issue to Applicant the above certificate of public convenience and necessity.

Respectfully submitted,

STATE AIRLINES, INC.

By: /s/ HENRY K. GILBERT, JR.
Henry K. Gilbert, Jr., President
and present Chief Operating Officer

[R. 582]

VERIFICATION

DISTRICT OF COLUMBIA ss:

On this 30th day of January 1945, personally appeared Henry K. Gilbert, Jr., who subscribed his name hereto and made oath and said that (1) he is the President of the State Airlines, Inc., Applicant in the above proceeding; (2) he has read and is familiar with the contents of the foregoing Application; (3) he intends and desires that in granting or denying the rights and privileges herein applied for, the Civil Aeronautics Board shall place full and complete reliance on the accuracy of each and every statement herein contained; (4) he is familiar with the facts set forth in the foregoing Application and to the best of his information and belief, every statement is true and no such statement is misleading; (5) in his opinion said Application does not omit to state any facts known to him which would be deemed by said Board to be of importance to it in reaching its determination in connection therewith.

Before me

/s/ ELLEN M. HERLIHY
Notary Public
Expires April 1, 1947

SEAL

(R. 583)

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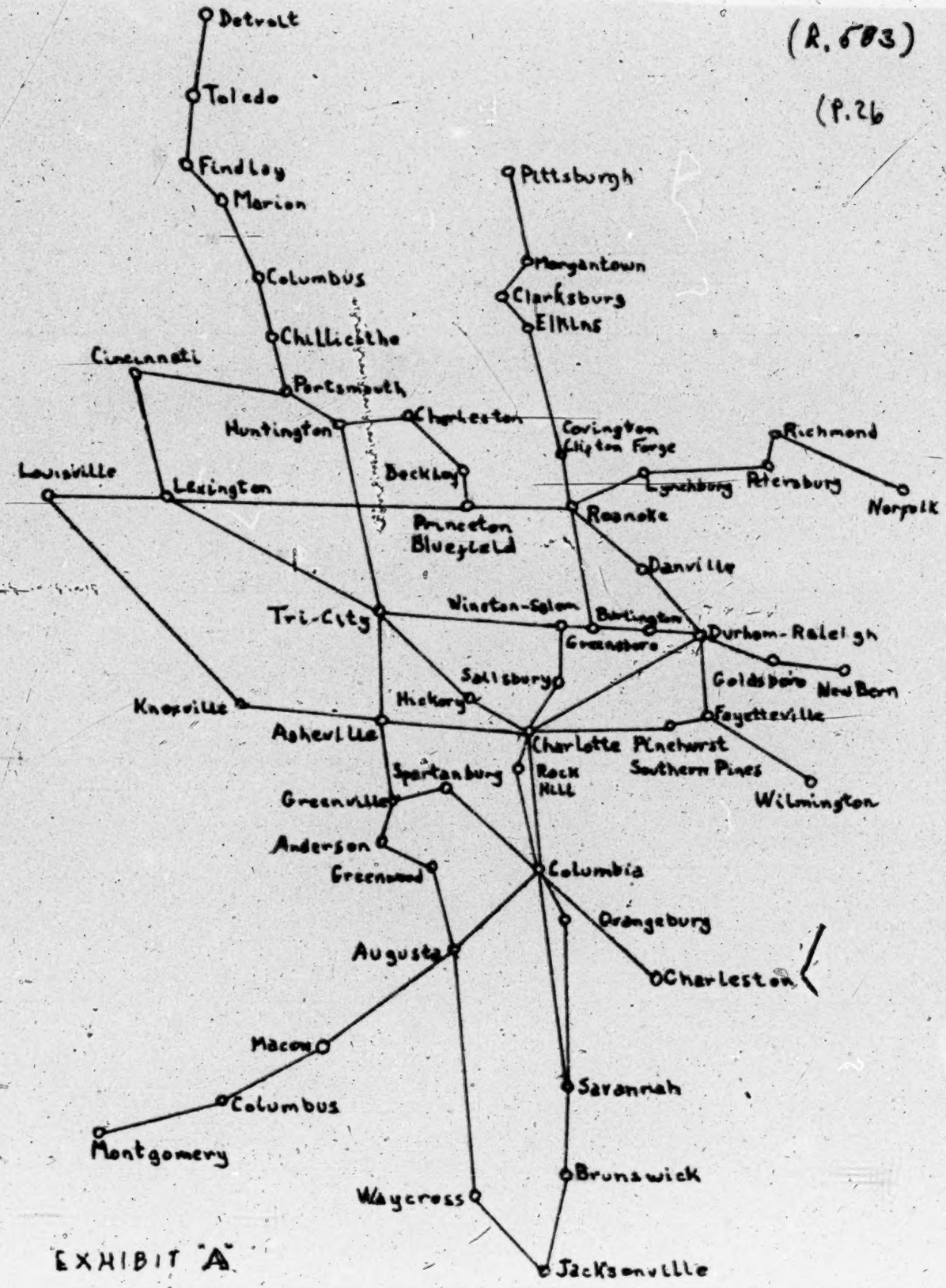

EXHIBIT "A"

Vol. 2 [R. 707]

ORDER OF THE CIVIL AERONAUTICS BOARD IN THE SOUTHEASTERN STATES CASE, DATED FEBRUARY 24, 1945

Docket No. 501 et al.

Order of Consolidation

It appearing to the Board that applications proposing air transportation services in the southeastern portion of the United States can be advantageously and expeditiously determined in a single proceeding;

It is ordered:

(R. 709) 11. That the portion of the application of State Airlines, Inc., Docket No. 1723, requesting a certificate authorizing air transportation between (a) Morgantown, W. Va. and Jacksonville, Fla. via various intermediate points, (b) Cincinnati, Ohio and Norfolk, Va. via various intermediate points, (c) Louisville, Ky. and Wilmington, N. C. via various intermediate points, (d) Portsmouth, Ohio and Wilmington, N. C. via various intermediate points, (e) Portsmouth, Ohio and Jacksonville, Fla. via various intermediate points, (f) Cincinnati, Ohio and Charleston, S. C. via various intermediate points, (g) New Bern, N. C. and Montgomery, Ala. via various intermediate points, (h) Louisville, Ky. and Jacksonville, Fla. via various intermediate points, and (i) Norfolk, Va. and Louisville, Ky. via various intermediate points, be severed from Docket No. 1723 and be assigned Docket No. *1776*.

(R. 710) 16. That the applications of . . . (R. 711) . . . Piedmont Aviation, Inc., Docket No. 1422; . . . State Airlines, Inc., Dockets No. 1114, 1711 and 1776; . . . be and they are consolidated into one proceeding, and said proceeding is assigned for hearing at a time and place to be hereafter designated before an Examiner of the Board.

BEFORE THE

CIVIL AERONAUTICS BOARD

In the matter of the Application of PIEDMONT AVIATION, INC. Under Section 401 of the Civil Aeronautics Act of 1938, as amended, for a Permanent or Temporary Certificate or Certificates of Public Convenience and Necessity, authorizing the operation of Civil Aircraft Service for persons, property and mail over the routes herein specified.	Docket No. 1422

APPLICATION FOR PERMANENT OR TEMPORARY CERTIFICATE OR CERTIFICATES

PIEDMONT AVIATION, INC.

By Thomas H. Davis, President,
Smith Reynolds Airport,
Winston-Salem, N. C.

Womble, Carlyle, Martin & Sandridge,
Wachovia Bank Building,
Winston-Salem, North Carolina.

Attorneys for Applicant.

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APPLICATION FOR PERMANENT OR TEMPORARY CERTIFICATE OR CERTIFICATES

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EXHIBITS

A—Map showing all of the nine proposed routes, including points to be served.

B-J—Maps showing individual routes to be served.

B-1-J-1—Individual route statistics.

Communications with respect to this application should be addressed to—

Piedmont Aviation, Inc.,
Smith Reynolds Airport,
Winston-Salem, N. C.

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BEFORE THE

CIVIL AERONAUTICS BOARD OF THE UNITED STATES OF AMERICA

In the Matter of the Application of

PIEDMONT AVIATION, INC.,

Under Section 401 of the Civil Aeronautics Act of 1938, as amended, for a Permanent or Temporary Certificate or Certificates of Public Convenience and Necessity, authorizing the operation of Civil Aircraft Service for persons, property and mail over the routes herein specified.	Docket No. 1422

TO THE HONORABLE, THE CIVIL AERONAUTICS BOARD:

The Applicant, PIEDMONT AVIATION, INC., whose address is Smith Reynolds Airport, Winston-Salem, N. C., hereby applies for a permanent and/or temporary Certificate of Public Convenience and Necessity under Section 401 of the Civil Aeronautics Act of 1938, as amended, and such other sections thereof and such orders and regulations of the Board as may be applicable, for the authorization to engage in scheduled air transportation as an air carrier of passengers, mail and property, in combination local and feeder passenger service and mail, express and property pickup service on the routes detailed herein, or such modification of such routes as the Board may find public convenience and necessity require.

In the event the Board shall determine, in the interest of public convenience and necessity, that temporary Certificates of Public Convenience and Necessity should also be issued, either for limited duration or during the pendency of application for permanent certificates, then this application shall be, and is hereby declared to be, an additional application for such temporary Certificates of Public Convenience and Necessity.

Comes now PIEDMONT AVIATION, INC., a corporation, and respectfully represents to the Board:

APPLICANT.

1. That the Applicant is a corporation, chartered, organ-

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ized and existing under the laws of the State of North Carolina. Its full corporate name and its address are Piedmont Aviation, Inc., Smith Reynolds Airport, Winston-Salem, North Carolina.

CITIZENSHIP.

2. That the applicant is a citizen of the United States, as defined in Section 1, paragraph 13, of the Civil Aeronautics Act of 1938. Its President, Thomas H. Davis, is a citizen of the United States and the principal stockholder of the corporation, and all other officers and members of its Board of Directors are citizens of the United States, and that more than seventy-five per centum of the voting interest in the applicant corporation is owned or controlled by persons who are citizens of the United States; that competent written and oral evidence proving such citizenship will be presented by an officer of the applicant corporation at the hearing on the application.

AUTHORITY SOUGHT.

3. Applicant seeks certificate or certificates of public convenience and necessity, either permanent or temporary, authorizing the scheduled transportation by air of mail, passengers and property over each of the following routes:

ROUTE 1: Between the terminals of Winston-Salem, N. C., and Cincinnati, Ohio, via the intermediate points Mount Airy, N. C.; Galax, Va.; Pulaski, Va.; Bluefield, W. Va.; Princeton, W. Va.; Beckley, W. Va.; Charleston, W. Va.;

Huntington, W. Va.; Ashland, Ky.; Portsmouth, Ohio; Vanceburg, Ky.; Maysville, Ky.

ROUTE 2: Circle route from Winston-Salem, N. C., via the intermediate points Greensboro, N. C.; Reidsville, N. C.; Danville, Va.; Chatham, Va.; Altavista, Va.; Lynchburg, Va.; Bedford, Va.; Roanoke, Va.; Blacksburg, Va.; Radford, Va.; Pulaski, Va.; Wytheville, Va.; Marion, Va.; Abingdon, Va.; Johnson City, Tenn. (Kingsport, Tenn., Bristol, Va.); Bulls Gap, Tenn.; Morristown, Tenn.; Jefferson City,

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Tenn.; Mascot, Tenn.; Knoxville, Tenn.; Bryson City, N. C.; Sylva, N. C.; Waynesville, N. C.; Canton, N. C.; Asheville, N. C.; Marion, N. C.; Morganton, N. C.; Hickory, N. C.; Newton, N. C.; Statesville, N. C.; Mocksville, N. C.

ROUTE 3: Circle route from Winston-Salem, N. C., via the intermediate points Madison, N. C.; Martinsville, Va.; Rocky Mount, Va.; Roanoke, Va.; Bedford, Va.; Lynchburg, Va.; Farmville, Va.; Charlottesville, Va.; Orange, Va.; Culpeper, Va.; Warrenton, Va.; Manassus, Va.; Washington, D. C.; Frederic, Md.; Hagerstown, Md.; Martinsburg, W. Va.; Winchester, Va.; Front Royal, Va.; Luray, Va.; Shenandoah, Va.; Harrisonburg, Va.; Staunton, Va.; Waynesboro, Va.; Buena Vista, Va.; Lynchburg, Va.; Altavista, Va.; Chatham, Va.; Danville, Va.; Reidsville, N. C.; Greensboro, N. C.

ROUTE 4: Circle route from Winston-Salem, N. C., via the intermediate points Greensboro, N. C.; Reidsville, N. C.; Danville, Va.; South Boston,

Va.; Chase City, Va.; Victoria, Va.; Blackstone, Va.; Petersburg, Va.; Richmond, Va.; Williamsburg, Va.; Newport News, Va.; Norfolk, Va.; Suffolk, Va.; Franklin, Va.; Emporia, Va.; Roanoke Rapids, N. C.; Littleton, N. C.; Warrenton, N. C.; Henderson, N. C.; Oxford, N. C.; Roxboro, N. C.; Burlington, N. C.; Greensboro, N. C.

ROUTE 5: Between the terminals of Winston-Salem, N. C., and Atlanta, Ga., via the intermediate points High Point, N. C.; Thomasville, N. C.; Lexington, N. C.; Salisbury, N. C.; Kan-

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napolis, N. C.; Concord, N. C.; Charlotte, N. C.; Gastonia, N. C.; Kings Mountain, N. C.; Shelby, N. C.; Gaffney, S. C.; Spartanburg, S. C.; Greenville, S. C.; Williamston, S. C.; Anderson, S. C.; Seneca, S. C.; Toccoa, Ga.; Cornelia, Ga.; Gainesville, Ga.; Buford, Ga.; Atlanta, Ga.

ROUTE 6: Between the terminals of Norfolk, Va., and Atlanta, Ga., via the intermediate points Elizabeth City, N. C.; Edenton, N. C.; Plymouth, N. C.; Washington, N. C.; Greenville, N. C.; Tarboro, N. C.; Rocky Mount, N. C.; Wilson, N. C.; Raleigh, N. C.; Dunn, N. C.; Fayetteville, N. C.; St. Pauls, N. C.; Lumberton, N. C.; Fairmont, N. C.; Dillon, S. C.; Florence, S. C; Timmonsville, S. C.; Sumter, S. C.; Camden, S. C.; Columbia, S. C.; Newberry, S. C.; Laurens, S. C.; Greenwood, S. C.; Calhoun Falls, S. C.; Elberton, Ga.; Athens, Ga.; Winder, Ga.; Atlanta, Ga.

ROUTE 7: Circle route from Winston-Salem, N. C., via the intermediate points Elkin, N. C.; North

Wilkesboro, N. C.; Lenoir, N. C.; Hickory, N. C.; Morgantown, N. C.; Marion, N. C.; Asheville, N. C.; Hendersonville, N. C.; Tryon, N. C.; Rutherfordton, N. C.; Shelby, N. C.; Kings Mountain, N. C.; Gastonia, N. C.; Charlotte, N. C.; Monroe, N. C.; Wadesboro, N. C.; Rockingham, N. C.; Laurinburg, N. C.; Lumberton, N. C.; Whiteville, N. C.; Wilmington, N. C.; Burgaw, N. C.; Wallace, N. C.; Jacksonville, N. C.; Beaufort, N. C.; New Bern, N. C.; Kinston, N. C.; Goldsboro, N. C.; Smithfield, N. C.; Raleigh, N. C.; Durham, N. C.; Hillsboro, N. C.; Burlington, N. C.; Greensboro, N. C.

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ROUTE 8: Circle route from Winston-Salem, N. C., via the intermediate points High Point, N. C.; Asheboro, N. C.; Siler City, N. C.; Sanford, N. C.; Raleigh, N. C.; Smithfield, N. C.; Goldsboro, N. C.; Mount Olive, N. C.; Warsaw, N. C.; Clinton, N. C.; Fayetteville, N. C.; Southern Pines, N. C.; Carthage, N. C.; Troy, N. C.; Albemarle, N. C.; Concord, N. C.; Charlotte, N. C.; Gastonia, N. C.; Kings Mountain, N. C.; Shelby, N. C.; Lincolnton, N. C.; Maiden, N. C.; Hickory, N. C.; Newton, N. C.; Statesville, N. C.; Mocksville, N. C.

ROUTE 9: Between the terminals of Winston-Salem, N. C., and Charleston, S. C., via the intermediate points High Point, N. C.; Thomasville, N. C.; Lexington, N. C.; Salisbury, N. C.; Kannapolis, N. C.; Concord, N. C.; Charlotte, N. C.; Fort Mill, S. C.; Rock Hill, S. C.; Lancaster, S. C.; Kershaw, S. C.; Camden, S. C.; Sumter, S. C.; Manning, S. C.; Orangeburg, S. C.; St. George, S. C.; Charleston, S. C.

4. In addition to towns and cities served by direct air service, the applicant proposes to serve the following towns lying immediately adjacent to those having direct service by messenger service:

ROUTE 1: Pocohontas, Va., and Framwell, W. Va., from Bluefield, W. Va.; Ironton, Ohio, from Ashland, Ky.; Fullerton, Ky., and Seiotoville, Ohio, from Portsmouth, Ohio.

ROUTE 2: Kernersville, N. C., from Greensboro, N. C.; Salem, Va., from Roanoke, Va.; Christiansburg, Va., from Blacksburg, Va.; Alcoa, Tenn., and Marysville, Tenn., from Knoxville, Tenn.;

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Hazelwood, N. C., from Waynesville, N. C.; Valdese, N. C., from Morgantown, N. C.; Granite Falls, N. C., from Hickory, N. C.; Conover, N. C., from Newton, N. C.; Cooleemee, N. C., from Mocksville, N. C.

ROUTE 3: Mayodan, N. C., from Madison, N. C.; Salem, Va., from Roanoke, Va.; Williamsport, Md., from Hagerstown, Md.; Lexington, Va., from Buena Vista, Va.; Kernersville, N. C., from Greensboro, N. C.

ROUTE 4: Kernersville, N. C., from Greensboro, N. C.; Crewe, Va., from Blackstone, Va.; Hopewell, Va., from Petersburg, Va.; Hampton, Va., from Newport News, Va.; Weldon, N. C., from Roanoke Rapids, N. C.; Graham, N. C., and Haw River, N. C., from Burlington, N. C.; Kernersville, N. C., from Greensboro, N. C.

ROUTE 5: Spencer, N. C., from Salisbury, N. C.; Landis, N. C., and China Grove, N. C., from Kannapolis, N. C.; Belmont, N. C., Mount Holly, N. C., Dallas, N. C., and Bessemer City, N. C.,

from Gastonia, N. C.; Pelzer, S. C., and Belton, S. C., from Williamston, S. C.

ROUTE 6: Erwin, N. C., and Benson, N. C., from Dunn, N. C.; Eau Claire, S. C., New Brooklyn, S. C., and Cayce, S. C., from Columbia, S. C.; Clinton, S. C., from Laurens, S. C.

ROUTE 7: Jonesville, N. C., from Elkin, N. C.; Wilkesboro, N. C., from North Wilkesboro, N. C.; Granite Falls, N. C., from Hickory, N. C.; Valdese, N. C., from Morganton, N. C.; Forest City, N. C., Spindale, N. C.; Caroleen, N. C., Henrietta, N. C., and Cliffside, N. C., from

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Rutherfordton, N. C.; Belmont, N. C., Mt. Holly, N. C., Dallas, N. C., and Bessemer City, N. C., from Gastonia, N. C.; Hamlet, N. C., from Rockingham, N. C.; Maxton, N. C., from Laurinburg, N. C.; Selma, N. C., from Smithfield, N. C.; Graham, N. C., and Haw River, N. C., from Burlington, N. C.; Kernersville, N. C., from Greensboro, N. C.

ROUTE 8: Selma, N. C., from Smithfield, N. C.; Aberdeen, N. C., and Pinehurst, N. C., from Southern Pines, N. C.; Belmont, N. C., Mt. Holly, N. C., Dallas, N. C., and Bessemer City, N. C., from Gastonia, N. C.; Granite Falls, N. C., from Hickory, N. C.; Conover, N. C., from Newton, N. C.; Cooleemee, N. C., from Mocksville, N. C.

ROUTE 9: Spencer, N. C., from Salisbury, N. C.; Landis, N. C., and China Grove, N. C., from Kannapolis, N. C.

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PIEDMONT AVIATION INC.

PROPOSED ROUTES

Total Route Miles — 4965

LEGEND
- ● Scheduled Stop
- ○ Flag Stop
- ▬ Mail Pick-up

EXHIBIT "A"

ROUTE STATISTICS:

5. The applicant submits the following statistics with respect to its proposed routes:

Route No.	Mileage	Average Miles Between Stations	No. Scheduled Stops	No. Flag Stops	No. Pickups
1	374	26.1	4	5	5
2	655	19.2	10	17	6
3	705	22.1	10	13	9
4	520	20.2	7	8	10
5	358	16.6	5	10	7
6	698	24.2	15	10	4
7	805	22.1	12	9	15
8	517	18.2	8	14	6
9	333	18.9	5	8	5
Totals	4,965	20.8	76	94	67

Total towns and cities served (not including towns served by messenger) 178

Average population per route mile (including towns served by messenger) ..... 1,324.

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6. Detailed statistics concerning the population of each town and city served, miles between stations, accumulated mileage, type of service for each station, points served by messenger and population, are attached hereto and made a part hereof as Exhibits B-1, C-1, D-1, E-1, F-1, G-1, H-1, I-1, J-1.

MAPS.

7. A map, drawn approximately (as near as possible) to scale, and showing all of the proposed routes, including terminal and intermediate points to be served, is attached hereto and made a part hereof as Exhibit A.

8. Maps drawn approximately to scale, showing each individual proposed route, are attached hereto and made a part hereof as Exhibits B, C, D, E, F, G, H, I and J.

EQUIPMENT.

9. That said applicant proposes to use approved conventional single and/or multi-engined aircraft which may be available at the time such services are inaugurated. The applicant proposes to use single-engined aircraft of the Stinson Reliant type, equipped with automatic mail pickup device on routes certificated for the transportation of mail and property only, and twin-engined aircraft equipped with automatic mail pickup device on routes certificated for the transportation of passengers, mail and property. Should unconventional aircraft prove more practical at any time, the applicant proposes to use such aircraft with the approval of the Board.

10. That the applicant owns at present two aircraft suitable for mail and property pickup operations, in addition to various other aircraft, and is now in the process of acquiring additional aircraft suitable for airmail pickup operations.

AERONAUTICAL ACTIVITY.

11. That said applicant does not hold a Certificate of Public Convenience and Necessity, and that neither it, nor any affiliate, subsidiary, nor any of its principal stockholders, is engaged in any form of transportation as a common car-

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rier; that applicant is engaged at Winston-Salem North Carolina, in training pilots for the War Training Service under the supervision of the Civil Aeronautics Administration, the operation of an aircraft and aircraft engine overhaul and repair station, which is approved by the Civil Aeronautics Administration, and in aircraft charter service operation.

HISTORY.

12. The applicant corporation has, for several years, operated flight training programs for the United States

Government at Winston-Salem, North Carolina, and until February 1st, 1944, at Greensboro, North Carolina.

The applicant corporation was chartered and organized under the laws of the State of North Carolina, to engage in the sale, repair and operation of aircraft and other aeronautical activities. Prior to July 1st, 1941, the principal activity of the applicant was that of aircraft sales and charter air transportation service. At that time the applicant was selected as one of the then fourteen Type A Civil Aeronautics Administration Pilot Training Centers in the United States. On January 1st, 1942, the applicant was awarded a contract by the Defense Supplies Corporation to train Central and South American students under the supervision of the Civil Aeronautics Administration to become flight instructors. In February, 1943, the training school of the applicant was selected as one of two such schools in the Second Region of the Civil Aeronautics Administration to train Army Air Corps Enlisted Reservists in Cross-Country flying. In this particular course, students were taught airline procedure, cross-country flying, radio range flying and radio loop orientation procedures, as well as night flying. The type of aircraft used in the advanced stage of this training program are identical to those proposed to be used by the applicant on routes to be flown carrying mail and property only. In conducting this particular training program the pilot personnel of the applicant has made many hundreds of cross-country flights over the entire area which the applicant proposes to serve.

In April, 1943, the applicant organized a pilot training

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school at Greensboro, North Carolina, for the training of Army Air Forces Air Crew candidates, under the supervision of the Civil Aeronautics Administration War Training Service. To date, the applicant has operated aircraft under United States Government contracts the equivalent of over three million five hundred thousand (3,500,000) miles, without a fatality or serious injury to any student or instructor.

Since July, 1941, the Aircraft and Aircraft Engine Overhaul and Repair Shops of the applicant have been Government approved, and are designated as Approved Repair Station No. 1340. In addition to the overhaul and repair of aircraft, the shops of the applicant have been called on to perform sub-contract work for Army Air Force contractors.

WHEREFORE, the applicant prays that the Civil Aeronautics Board enter an appropriate order or orders, authorizing the applicant to engage in scheduled air transportation as an air carrier of passengers, mail and property on the routes described herein, and for such other and further relief, general and specific, under Section 401 of the Civil Aeronautics Act of 1938, as amended, as the Board may deem appropriate, and to which the applicant may be entitled in any proceeding in which the application may be heard in part or in its entirety.

Respectfully submitted,

PIEDMONT AVIATION, INC.

By T. H. DAVIS
President.

ATTEST:

J. FRANK GROAT
Secretary.

[SEAL]

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STATE OF NORTH CAROLINA
COUNTY OF FORSYTH } ss.:

THOMAS H. DAVIS, of lawful age, being duly sworn on oath, states that he is President of Piedmont Aviation, Inc., and as such makes this affidavit; that he has read the above application and is familiar with the contents thereof and the attached exhibits; that he intends and desires that in granting or denying the relief requested, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief, every statement contained in said application is true and no such statement is misleading.

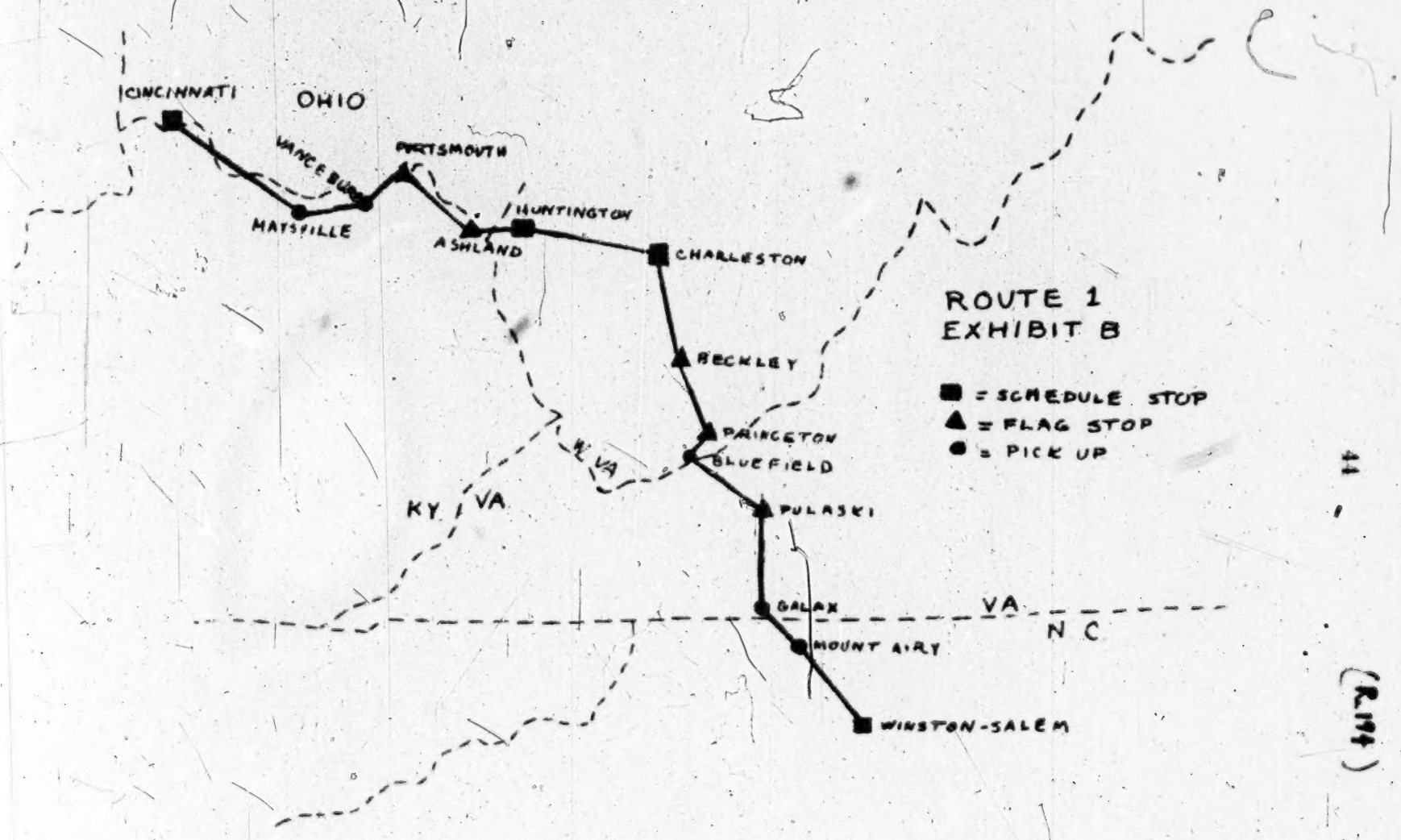
T. H. DAVIS

Subscribed and sworn to before me this 29th day of May, 1944.

M. F. FARE
Notary Public for North Carolina.

My Commission expires May 16, 1946.

[SEAL]

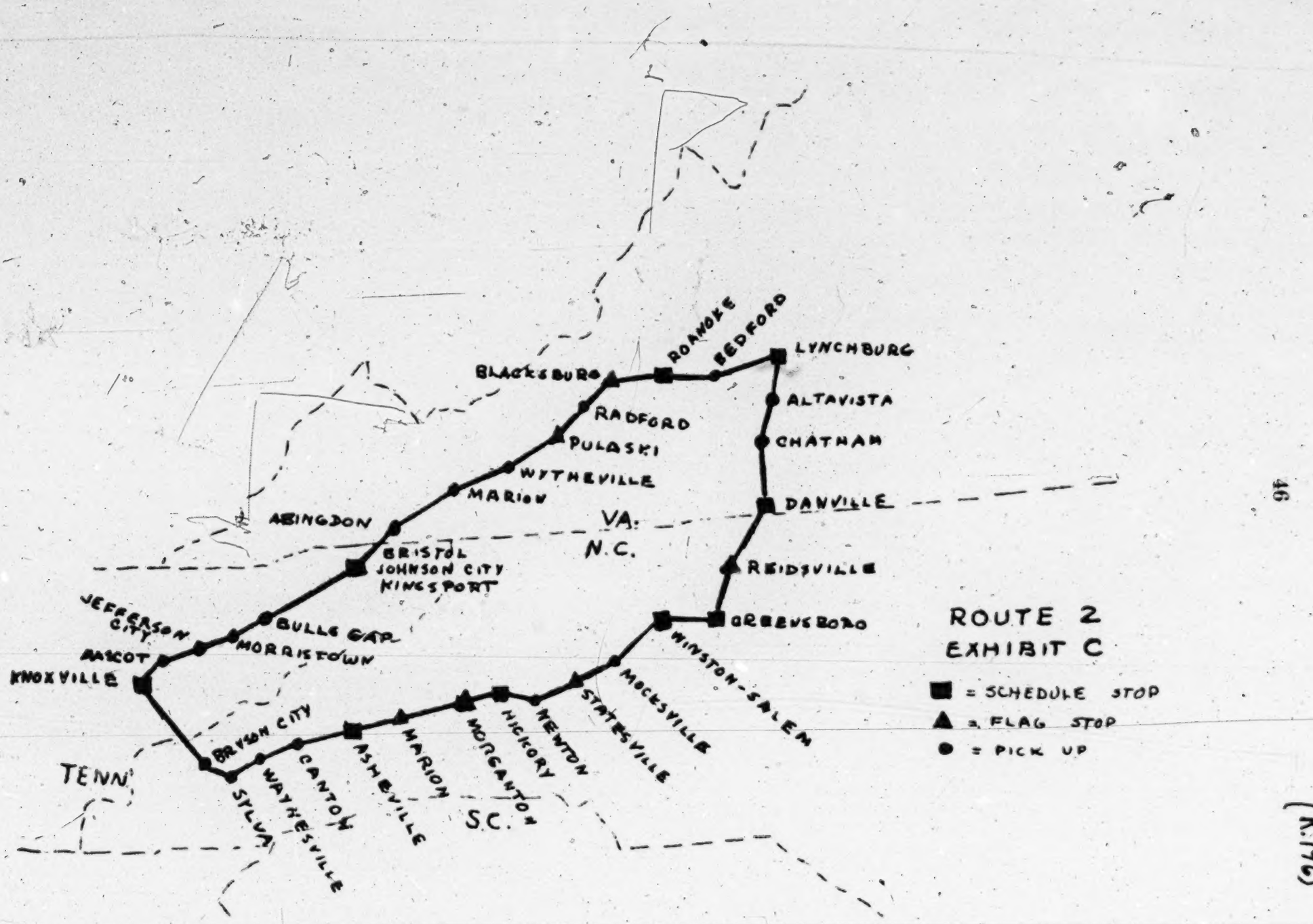

CINCINNATI
OHIO
MAYSVILLE
PORTSMOUTH
HUNTINGTON
ASHLAND
CHARLESTON
BECKLEY
PRINCETON
BLUEFIELD
W VA
KY / VA
PULASKI
GALAX
VA
N C
MOUNT AIRY
WINSTON-SALEM
ROUTE 1
EXHIBIT B
■ = SCHEDULE STOP
▲ = FLAG STOP
● = PICK UP

(R.194)

Route No. 1, - Winston-Salem, N. C., to Cincinnati, Ohio. Exhibit B-1.

Town	Population '40 Census	Mileage Between Stops	Accumulated Mileage	Type of Service Scheduled	Pickup	Flag	Messenger Service
Winston-Salem, N. C.	79,815			x			
Mount Airy, N. C.	6,286	34	34		x		
Galax, Va.	3,195	18	52		x		
Pulaski, Va.	8,792	36	88			x	
Bluefield, W. Va.	20,641	28	116		x		Pocohontas, Va., Framwell, W. Va.
Princeton, W. Va.	7,426	10	126			x	
Beckley, W. Va.	12,852	32	158			x	
Charleston, W. Va.	67,914	53	211	x			
Huntington, W. Va.	78,836	39	250	x			
Ashland, Ky.	29,537	8	258			x	Ironton, Ohio
Portsmouth, Ohio	40,466	28	286			x	Fullerton, Ky., Seiotoville, Ohio
Vanceburg, Ky.	1,184	17	303		x		
Maysville, Ky.	6,572	24	327		x		
Cincinnati, Ohio	455,610	47	374	x			
TOTALS	819,126	374	374	4	5	5	(Accumulated Population - 18,474.)

(R. 195)

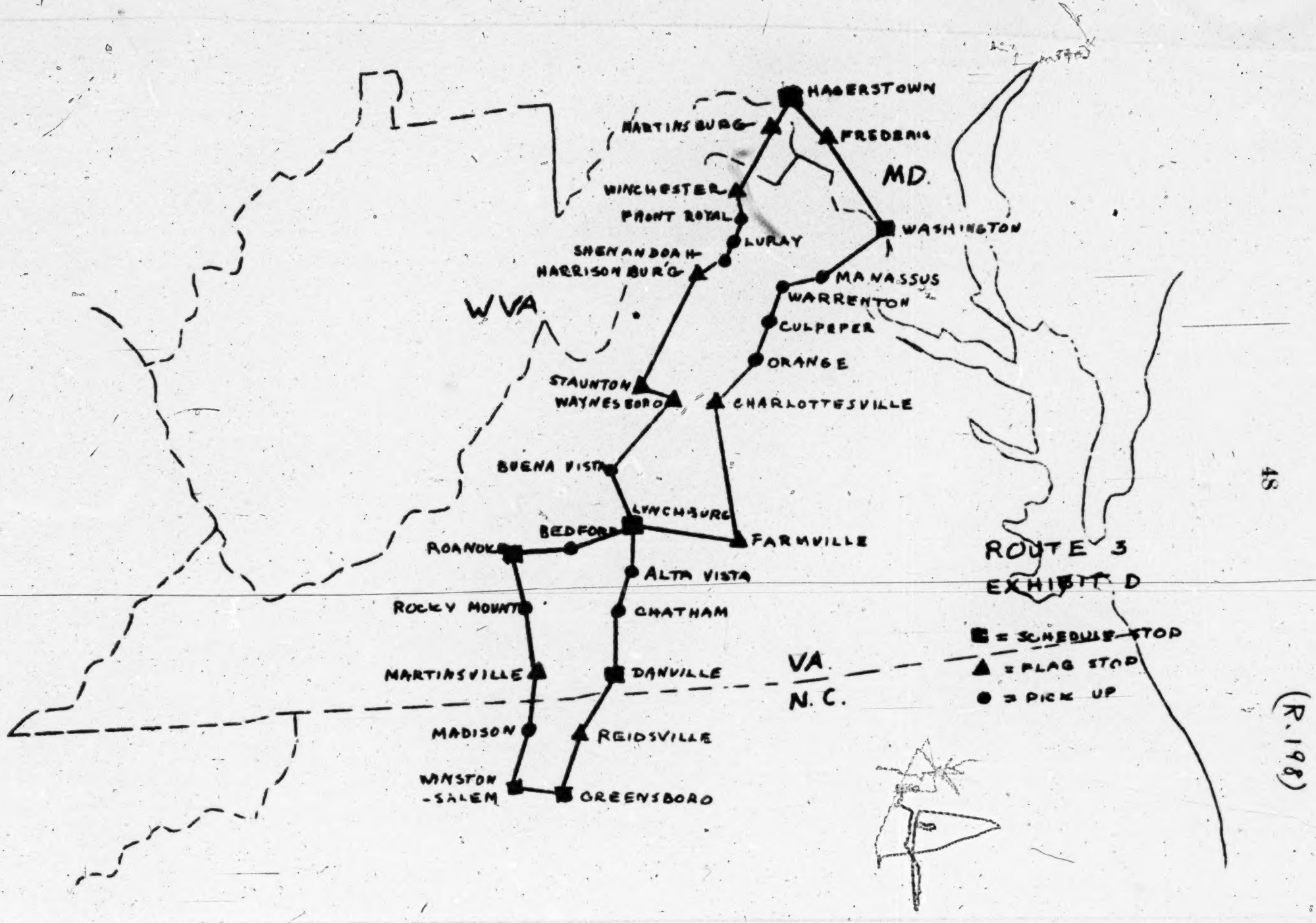

BLACKSBURG
ROANOKE
BEDFORD
LYNCHBURG
ALTAVISTA
CHATHAM
DANVILLE
RADFORD
PULASKI
WYTHEVILLE
MARION
ABINGDON
VA.
N.C.
BRISTOL
JOHNSON CITY
KINGSPORT
REIDSVILLE
GREENSBORO
WINSTON-SALEM
MOCKSVILLE
STATESVILLE
NEWTON
HICKORY
MORGANTON
MARION
ASHEVILLE
CANTON
WAYNESVILLE
SYLVA
BRYSON CITY
S.C.
TENN.
MORRISTOWN
BULLS GAP
JEFFERSON CITY
KNOXVILLE
ROUTE 2
EXHIBIT C
= SCHEDULE STOP
= FLAG STOP
= PICK UP

(R.196)

Route No. 2. - Circle route between terminals of Winston-Salem, N. C., and Knoxville, Tenn. Exhibit C-1.

Town	Population 1940 Census	Mileage Between Stops	Accumulated Mileage	Type of Service			Messenger Service
				Scheduled	Pickup	Flag	
Winston-Salem, N. C.	79,815			x			
Greensboro, N. C.	59,319	16	16	x			Kernersville, N. C.
Reidsville, N. C.	10,387	24	40			x	
Danville, Va.	32,749	24	64	x			
Chatham, Va.	1,230	18	82		x		
Altavista, Va.	2,919	20	102		x		
Lynchburg, Va.	44,541	16	118	x			
Bedford, Va.	3,973	18	136		x		
Roanoke, Va.	69,287	25	161	x			Salem, Va.
Blacksburg, Va.	2,699	25	186			x	Christiansburg, Va.
Radford, Va.	6,990	11	197		x		
Pulaski, Va.	8,792	12	209			x	
Wytheville, Va.	4,653	19	228		x		
Marion, Va.	5,177	25	253		x		
Abingdon, Va.	3,158	27	280		x		
Johnson City, Tenn. (Kingsport, Tenn., Bristol, Va.)	53,740	29	309	x			
Bulls Gap, Tenn.	1,200	41	350		x		
Morristown, Tenn.	8,050	12	362		x		
Jefferson City, Tenn.	2,576	12	374		x		
Mascot, Tenn.	1,800	14	388		x		
Knoxville, Tenn.	111,580	22	410	x			Alcoa, Tenn., Marysville, Tenn.
Bryson City, N. C.	1,612	40	450		x		
Sylva, N. C.	1,409	14	464		x		
Waynesville, N. C.	2,940	16	480		x		Hazelwood, N. C.
Canton, N. C.	5,037	9	489		x		
Asheville, N. C.	51,310	22	511	x			
Marion, N. C.	2,889	32	543			x	
Morganton, N. C.	7,670	19	562			x	Valdese, N. C.
Hickory, N. C.	13,487	17	579	x			Granite Falls, N. C.
Newton, N. C.	5,407	10	589		x		Conover, N. C.
Statesville, N. C.	11,440	15	604			x	
Mocksville, N. C.	1,607	25	629		x		Cooleemee, N. C.
Winston-Salem, N. C.		26	655	x			
TOTALS	619,443	655	655	10	17	6	(Accumulated Population - 29,912

(R.197)


HAGERSTOWN
MARTINSBURG
FREDERICK
MD.
WINCHESTER
FRONT ROYAL
LURAY
WASHINGTON
SHENANDOAH-
HARRISONBURG
MANASSUS
WARRENTON
WVA
CULPEPER
ORANGE
STAUNTON
WAYNESBORO
CHARLOTTESVILLE
BUENA VISTA
LYNCHBURG
BEDFORD
FARMVILLE
ROANOKE
ALTA VISTA
ROCKY MOUNT
CHATHAM
MARTINSVILLE
DANVILLE
VA.
N.C.
MADISON
REIDSVILLE
WINSTON
-SALEM
GREENSBORO
ROUTE 3
EXHIBIT D
= SCHEDULE STOP
= FLAG STOP
= PICK UP

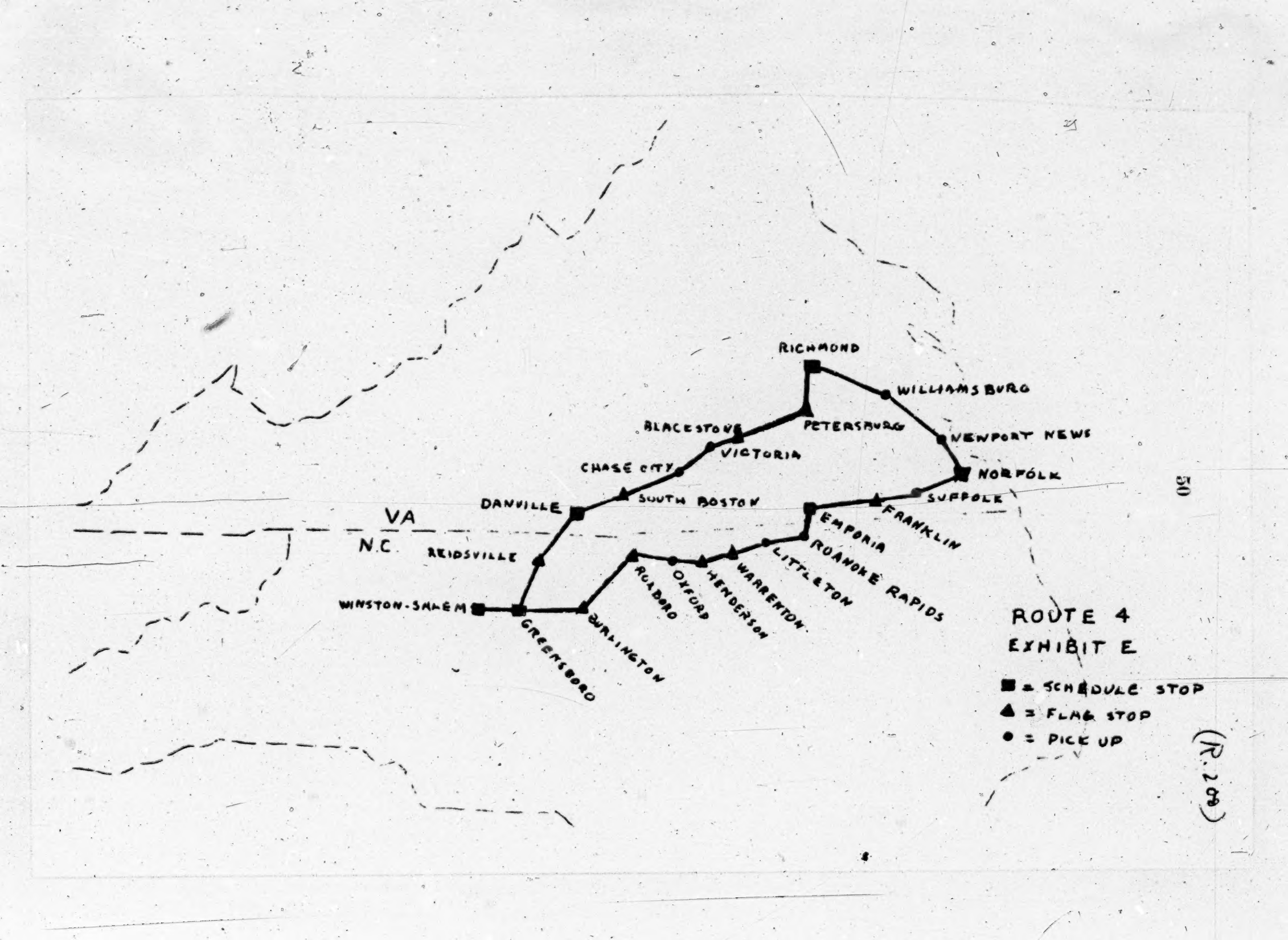
48

(R. 198)

Route No. 3. - Circle route between terminals of Winston-Salem, N. C., and Hagerstown, Md. Exhibit D-1.

Town	Population 1940 Census	Mileage Between Stops	Accumulated Mileage	Type of Service: Scheduled	Pickup	Flag	Messenger Service
Winston-Salem, N. C.	79,815			x			
Madison, N. C.	1,683	23	23		x		Mayodan, N. C.
Martinsville, Va.	10,080	22	45			x	
Rocky Mount, Va.	1,366	21	66		x		
Roanoke, Va.	69,287	23	89	x			Salem, Va.
Bedford, Va.	3,973	25	114		x		
Lynchburg, Va.	44,541	18	132	x			
Farmville, Va.	3,475	43	175			x	
Charlottesville, Va.	19,400	50	225			x	
Orange, Va.	1,980	25	250		x		
Culpeper, Va.	2,316	17	267		x		
Warrenton, Va.	1,651	20	287		x		
Manassus, Va.	1,302	17	304		x		
Washington, D. C.	663,091	24	304	x			
Frederic, Md.	15,802	44	348			x	
Hagerstown, Md.	32,491	26	374	x			Williamsport, Md.
Martinsburg, W. Va.	15,063	25	399			x	
Winchester, Va.	12,095	20	419			x	
Front Royal, Va.	3,831	16	435		x		
Luray, Va.	1,511	22	457		x		
Shenandoah, Va.	1,829	16	473		x		
Harrisonburg, Va.	8,768	14	487			x	
Staunton, Va.	13,937	24	511	x			
Waynesboro, Va.	7,373	12	523			x	
Buena Vista, Va.	4,335	35	558		x		Lexington, Va.
Lynchburg, Va.	44,541	30	588	x			
Altavista, Va.	2,919	16	604		x		
Chatham, Va.	1,230	20	624		x		
Danville, Va.	32,749	17	641	x			
Reidsville, N. C.	10,387	24	665			x	
Greensboro, N. C.	59,319	24	689	x			Kernersville, N. C.
Winston-Salem, N. C.		16	705	x			
TOTALS	1,251,355	705	705	10	13	9	(Accumulated Population - 15,849.)

(R. 199)

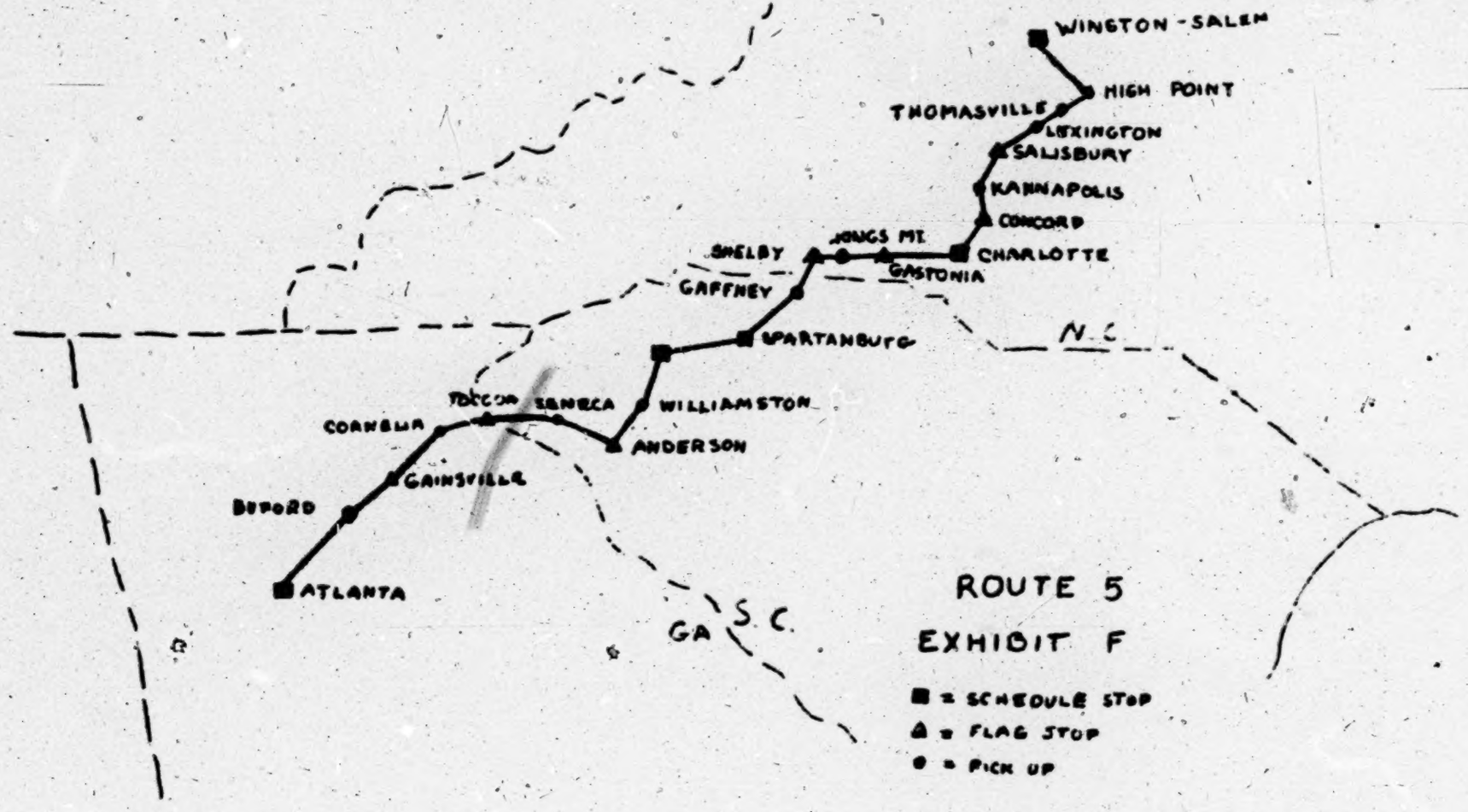

RICHMOND
WILLIAMSBURG
PETERSBURG
BLACKSTONE
VICTORIA
NEWPORT NEWS
CHASE CITY
NORFOLK
SOUTH BOSTON
DANVILLE
SUFFOLK
VA
N.C.
EMPORIA
FRANKLIN
REIDSVILLE
ROANOKE RAPIDS
LITTLETON
WARRENTON
HENDERSON
OXFORD
ROXBORO
WINSTON-SALEM
GREENSBORO
BURLINGTON
ROUTE 4
EXHIBIT E
■ = SCHEDULE STOP
▲ = FLAG STOP
● = PICK UP

(R. 209)

Route No. 4. - Circle route between terminals of Winston-Salem, N. C., and Norfolk, Va. Exhibit E-1.

Town	Population '40 Census	Mileage Between Stops	Accumulated Mileage	Type of Service			Messenger Service
				Scheduled	Pickup	Flag	
Winston-Salem, N. C.	79,815			x			
Greensboro, N. C.	59,319	16	16	x			Kernersville, N. C.
Reidsville, N. C.	10,387	24	40			x	
Danville, Va.	32,749	24	64	x			
South Boston, Va.	5,252	24	88			x	
Chase City, Va.	1,896	26	114		x		
Victoria, Va.	1,555	18	132		x		
Blackstone, Va.	2,699	16	148			x	Crewe, Va.
Petersburg, Va.	30,631	30	178			x	Hopewell, Va.
Richmond, Va.	193,042	20	198	x			
Williamsburg, Va.	3,942	37	235		x		
Newport News, Va.	37,067	25	260		x		Hampton, Va.
Norfolk, Va.	144,332	14	274	x			
Suffolk, Va.	11,343	23	297		x		
Franklin, Va.	3,466	18	315			x	
Emporia, Va.	2,735	35	350			x	
Roanoke Rapids, N. C.	8,545	17	367		x		Weldon, N. C.
Littleton, N. C.	1,200	14	381		x		
Warrenton, N. C.	1,147	14	395			x	
Henderson, N. C.	7,647	15	410			x	
Oxford, N. C.	3,991	11	421		x		
Roxboro, N. C.	4,599	22	443			x	
Burlington, N. C.	12,198	31	474			x	Graham, N. C., Haw River, N. C.
Greensboro, N. C.		30	504	x			Kernersville, N. C.
Winston-Salem, N. C.		16	520	x			
TOTALS	669,557	520	520	7	8	10	(Accumulated Population - 27,708.)

(R. 201)

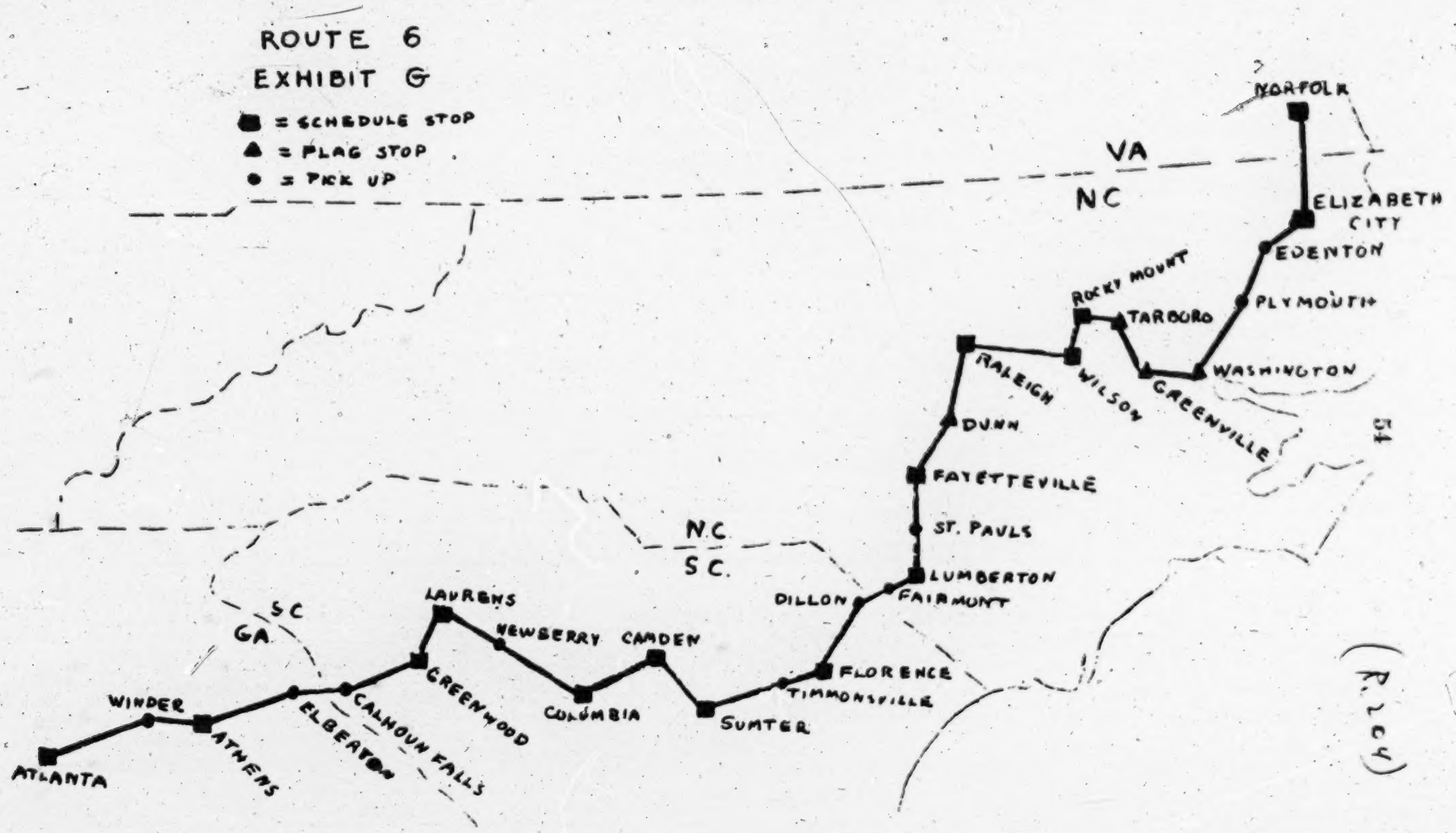

WINSTON-SALEM
HIGH POINT
THOMASVILLE
LEXINGTON
SALISBURY
KANNAPOLIS
CONCORD
KINGS MT.
SHELBY
CHARLOTTE
GASTONIA
GAFFNEY
SPARTANBURG
N C
TOCCOA
SENECA
WILLIAMSTON
ANDERSON
COMMERCE
GAINSVILLE
BUFORD
ATLANTA
GA
S C
ROUTE 5
EXHIBIT F
■ = SCHEDULE STOP
▲ = FLAG STOP
● = PICK UP

(R.202)

Route No. 5. - Winston-Salem, N. C., to Atlanta, Ga. Exhibit F-1.

Town	Population '40 Census	Mileage Between Stops	Accumulated Mileage	Type of Service Scheduled	Pickup	Flag	Messenger Service
Winston-Salem, N. C.	79,815			x			
High Point, N. C.	38,495	17	17		x		
Thomasville, N. C.	11,041	7	24		x		
Lexington, N. C.	10,550	11	35		x		
Salisbury, N. C.	19,037	19	54			x	Spencer, N. C.
Kannapolis, N. C.	12,661	12	66		x		Landis, N. C., China Grove, N. C.
Concord, N. C.	15,572	9	75			x	
Charlotte, N. C.	100,899	25	100	x			
Gastonia, N. C.	21,313	15	115			x	Belmont, Mt. Holly and Bessemer City, N. C., and Dallas, N. C.
Kings Mountain, N. C.	6,547	10	125		x		
Shelby, N. C.	14,037	10	135			x	
Gaffney, S. C.	7,636	15	150		x		
Spartanburg, S. C.	32,249	20	170	x			
Greenville, S. C.	34,734	22	192	x			
Williamston, S. C.	2,509	17	209		x		Pelzer, S. C., Belton, S. C.
Anderson, S. C.	19,424	15	224			x	
Seneca, S. C.	2,155	19	243		x		
Toccoa, Ga.	5,494	20	263			x	
Cornelia, Ga.	1,808	16	279		x		
Gainesville, Ga.	10,243	23	302			x	
Buford, Ga.	4,191	16	318		x		
Atlanta, Ga.	302,288	40	358	x			
TOTALS	752,698	358	358	5	10	7	(Accumulated Population - 24,090.)

(R. 203)

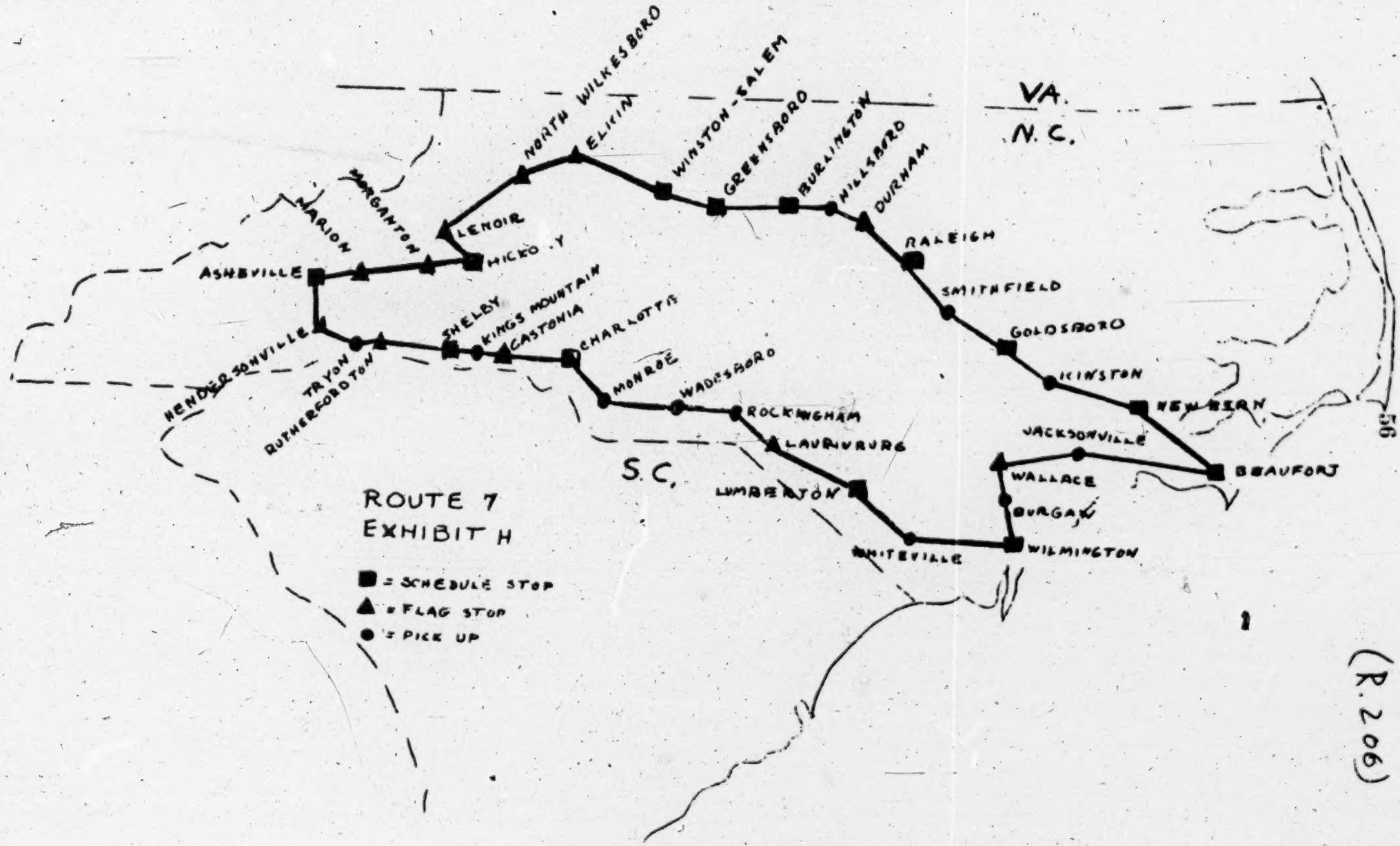

ROUTE 6
EXHIBIT G
= SCHEDULE STOP
= FLAG STOP
= PICK UP
VA
NC
NC
SC
SC
GA
NORFOLK
ELIZABETH CITY
EDENTON
PLYMOUTH
WASHINGTON
GREENVILLE
TARBORO
ROCKY MOUNT
WILSON
RALEIGH
DUNN
FAYETTEVILLE
ST. PAULS
LUMBERTON
FAIRMONT
DILLON
FLORENCE
TIMMONSVILLE
SUMTER
COLUMBIA
CAMDEN
NEWBERRY
LAURENS
GREENWOOD
CALHOUN FALLS
ELBERTON
ATHENS
WINDER
ATLANTA
54
(RICH)

Route No. 6. - Norfolk, Va., to Atlanta, Ga.

Exhibit G-1.

Town	Population 40 Census	Mileage Between Stops	Accumulated Mileage	Type of Service			Messenger Service
				Scheduled	Pickup	Flag	
Norfolk, Va.	144,332			x			
Elizabeth City, N. C.	11,564	44	44	x			
Edenton, N. C.	3,835	27	71		x		
Plymouth, N. C.	2,461	16	87		x		
Washington, N. C.	8,569	28	115			x	
Greenville, N. C.	12,674	18	133			x	
Tarboro, N. C.	7,148	22	155			x	
Rocky Mount, N. C.	25,568	15	170	x			
Wilson, N. C.	19,234	18	188	x			
Raleigh, N. C.	46,897	42	230	x			
Dunn, N. C.	5,256	29	259			x	Erwin, N. C., Benson, N. C.
Fayetteville, N. C.	17,428	20	279	x			
St. Pauls, N. C.	1,923	20	299		x		
Lumberton, N. C.	5,803	14	313	x			
Fairmont, N. C.	1,993	10	323		x		
Dillon, S. C.	3,867	15	338		x		
Florence, S. C.	16,054	25	363	x			
Timmonsville, S. C.	1,979	14	377		x		
Sumter, S. C.	15,874	29	406	x			
Camden, S. C.	5,747	28	434	x			
Columbia, S. C.	62,396	32	466	x			Eau Claire, New Brooklyn, Cayce, S. C.
Newberry, S. C.	7,510	42	508		x		
Laurens, S. C.	6,894	25	533	x			Clinton, S. C.
Greenwood, S. C.	13,020	26	559	x			
Calhoun Falls, S. C.	1,832	23	582		x		
Elberton, Ga.	6,138	15	597		x		
Athens, Ga.	20,650	30	627	x			
Winder, Ga.	3,974	23	650		x		
Atlanta, Ga.	302,288	48	698	x			
TOTALS	782,958	698	698	15	10	4	(Accumulated Population - 14,188.)

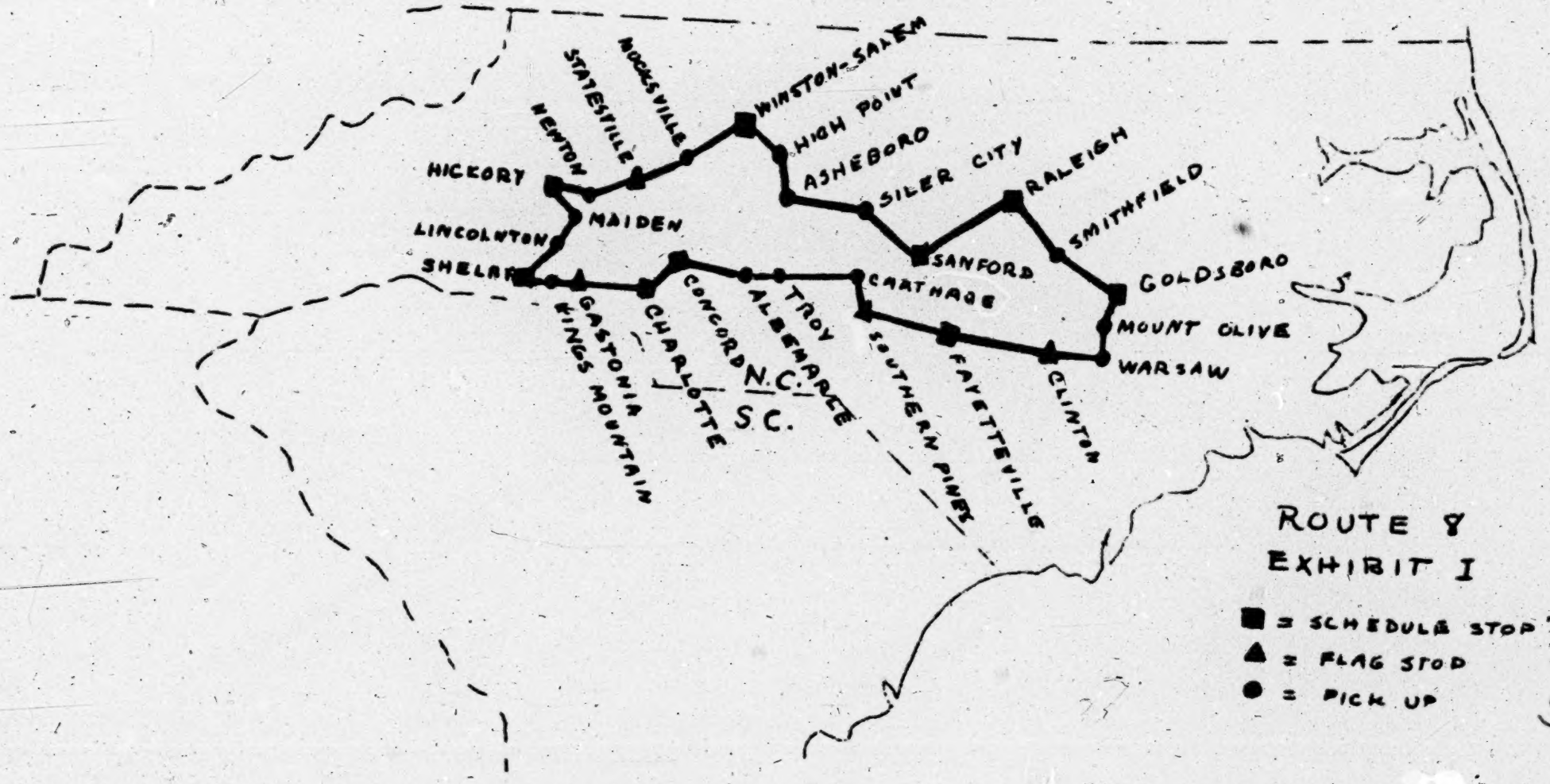
(R. 205)


VA.
N. C.
S. C.
NORTH WILKESBORO
ELKIN
WINSTON-SALEM
GREENSBORO
BURLINGTON
HILLSBORO
DURHAM
RALEIGH
SMITHFIELD
GOLDSBORO
KINSTON
NEW BERN
JACKSONVILLE
BEAUFORT
WALLACE
BURGAW
WILMINGTON
WHITEVILLE
LUMBERTON
LAURINBURG
ROCKINGHAM
WADESBORO
MONROE
CHARLOTTE
CASTONIA
KINGS MOUNTAIN
SHELBY
TRYON
RUTHERFORDTON
HENDERSONVILLE
ASHEVILLE
MARION
MORGANTON
LENOIR
HICKORY
ROUTE 7
EXHIBIT H
■ = SCHEDULE STOP
▲ = FLAG STOP
● = PICK UP
56
1
(R. 206)

Route No. 7. - Circle Route between terminals of Winston-Salem, N. C., and Wilmington, N. C. Exhibit H-1.

Town	Population '40 Census	Mileage Between Stops	Accumulated Mileage	Type of Service: Scheduled	Pickup	Flag	Messenger Service
Winston-Salem, N. C.	79,815			x			
Elkin, N. C.	2,734	36	36			x	Jonesville, N. C.
North Wilkesboro, N. C.	4,478	18	54			x	Wilkesboro, N. C.
Lenoir, N. C.	7,598	27	81			x	
Hickory, N. C.	13,487	16	97	x			Granite Falls, N. C.
Morganton, N. C.	7,670	18	115			x	Valdese, N. C.
Marion, N. C.	2,889	17	132			x	
Asheville, N. C.	51,310	33	165	x			
Hendersonville, N. C.	5,381	9	174			x	
Tryon, N. C.	2,043	14	188		x		
Rutherfordton, N. C.	2,326	21	209			x	Forest City, Spindale, Caroleen, Henrietta and Cliffside, N. C.
Shelby, N. C.	14,037	24	233			x	
Kings Mountain, N. C.	6,547	10	243		x		
Gastonia, N. C.	21,313	9	252			x	Belmont, Mt. Holly, Dallas and Bessemer City, N. C.
Charlotte, N. C.	100,899	15	267	x			
Monroe, N. C.	6,475	26	293			x	
Wadesboro, N. C.	3,587	27	320			x	
Rockingham, N. C.	3,657	18	338		x		Hamlet, N. C.
Laurinburg, N. C.	5,885	21	359			x	Maxton, N. C.
Lumberton, N. C.	5,803	26	385	x			
Whiteville, N. C.	3,011	28	413		x		
Wilmington, N. C.	33,407	46	459	x			
Burgaw, N. C.	1,476	20	479		x		
Wallace, N. C.	1,050	14	493			x	
Jacksonville, N. C.	873	32	525		x		
Beaufort, N. C.	3,272	44	569	x			
New Bern, N. C.	11,815	33	602	x			
Kinston, N. C.	15,388	34	636		x		
Goldsboro, N. C.	17,274	24	660	x			
Smithfield, N. C.	3,678	23	683		x		Selma, N. C.
Raleigh, N. C.	46,897	23	706	x			
Durham, N. C.	60,195	22	728			x	
Hillsboro, N. C.	1,311	15	743		x		
Burlington, N. C.	12,198	16	759			x	Graham, N. C., Haw River, N. C. Kernersville, N. C.
Greensboro, N. C.	59,319	30	789	x			
Winston-Salem, N. C.		16	805	x			
TOTALS	618,898	805	805	12	9	15	(Accumulated Total Population - 49,691.)

(P 207)



ROUTE 8
EXHIBIT I

■ = SCHEDULE STOP
▲ = FLAG STOP
● = PICK UP

(R-2 06)

Route No. 8. - Circle route from Winston-Salem, N. C. Exhibit I-1.

Town	Population '40 Census	Mileage Between Stops	Accumulated Mileage	Type of Service			Messenger Service
				Scheduled	Pickup	Flag	
Winston-Salem, N. C.	79,815			x			
High Point, N. C.	38,495	17	17		x		
Asheboro, N. C.	6,981	20	37		x		
Siler City, N. C.	2,197	21	58		x		
Sanford, N. C.	4,960	25	83	x			
Raleigh, N. C.	46,897	34	117	x			
Smithfield, N. C.	3,678	23	140		x		Selma, N. C.
Goldsboro, N. C.	17,274	24	164	x			
Mount Olive, N. C.	2,929	14	178		x		
Warsaw, N. C.	1,483	14	192		x		
Clinton, N. C.	3,557	13	205			x	
Fayetteville, N. C.	17,428	32	237	x			
Southern Pines, N. C.	3,225	30	267			x	Aberdeen, N. C., Pinehurst, N. C.
Carthage, N. C.	1,381	10	277		x		
Troy, N. C.	1,861	27	304		x		
Albemarle, N. C.	4,060	18	322		x		
Concord, N. C.	15,572	19	341			x	
Charlotte, N. C.	100,899	25	366	x			
Gastonia, N. C.	21,313	15	381			x	Belmont, Mt. Holly, Dallas, Bessemer City, N.C.
Kings Mountain, N. C.	6,547	10	391		x		
Shelby, N. C.	14,037	9	400			x	
Lincolnton, N. C.	4,525	20	420		x		
Maiden, N. C.	1,803	8	428		x		
Hickory, N. C.	13,487	14	442	x			Granite Falls, N. C.
Newton, N. C.	5,407	10	452		x		Conover, N. C.
Statesville, N. C.	11,440	15	467			x	
Mocksville, N. C.	1,607	25	492		x		Coolesmee, N. C.
Winston-Salem, N. C.		25	517	x			
TOTALS	432,858	517	517	8	14	6	(Accumulated Population - 21,275.)

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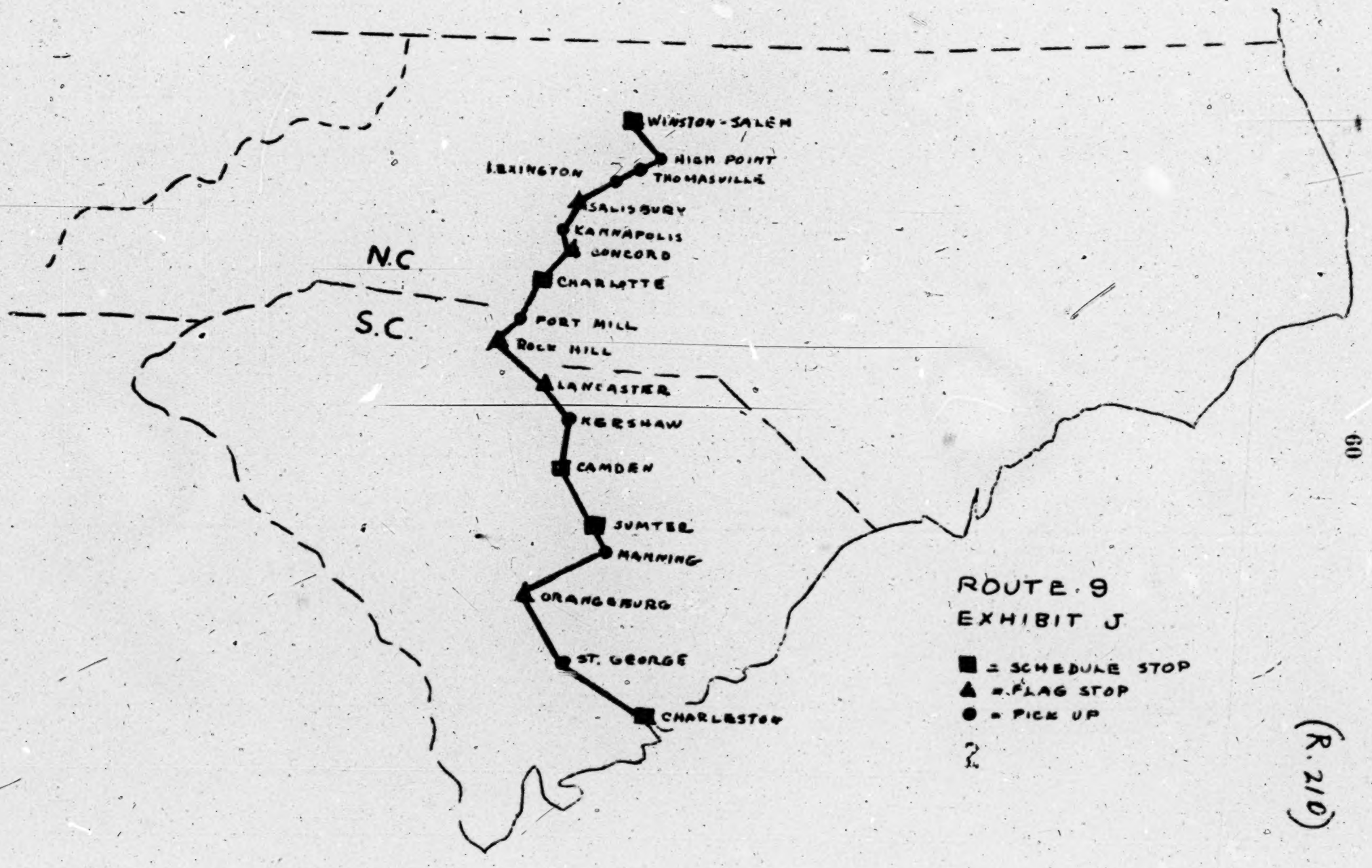
(R-1207)


WINSTON-SALEM
HIGH POINT
THOMASVILLE
LEXINGTON
SALISBURY
KANNAPOLIS
CONCORD
CHARLOTTE
FORT MILL
ROCK HILL
LANCASTER
KERSHAW
CAMDEN
SUMTER
MANNING
ORANGEBURG
ST. GEORGE
CHARLESTON
N.C.
S.C.
ROUTE 9
EXHIBIT J
■ = SCHEDULE STOP
▲ = FLAG STOP
● = PICK UP
2

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Route No. 9. - Winston-Salem, N. C., to Charleston, S. C. Exhibit J-1.

Town	Population '40 Census	Mileage Between Stops	Accumulated Mileage	Type of Service: Scheduled	Pickup	Flag	Messenger Service
Winston-Salem, N. C.	79,815			x			
High Point, N. C.	38,495	17	17		x		
Thomasville, N. C.	11,041	7	24		x		
Lexington, N. C.	10,550	11	35		x		
Salisbury, N. C.	19,037	19	54			x	Spencer, N. C.
Kannapolis, N. C.	12,661	12	66		x		Landis, N. C., China Grove, N. C.
Concord, N. C.	15,572	9	75			x	
Charlotte, N. C.	100,899	25	100	x			
Fort Mill, S. C.	2,919	14	114		x		
Rock Hill, S. C.	15,009	10	124			x	
Lancaster, S. C.	4,430	21	145			x	
Kershaw, S. C.	1,264	15	160		x		
Camden, S. C.	5,747	19	179	x			
Sumter, S. C.	15,874	27	206	x			
Manning, S. C.	2,381	18	224		x		
Orangeburg, S. C.	10,521	40	264			x	
St. George, S. C.	1,908	25	289		x		
Charleston, S. C.	71,275	44	333	x			
TOTALS	413,398	333	333	5	8	5	(Accumulated Population - 6,289.)

(R. 211)

Vol. 1 [R. 213-220]

BEFORE THE

CIVIL AERONAUTICS BOARD

In the Matter of APPLICATION OF PIEDMONT AVIATION, INC. under Section 401 of the Civil Aeronautics Act, as amended, for amendment of certificates of public convenience and necessity	Docket No. 1422

APPLICANT'S AMENDMENT NO. I

Communications from the Board with respect to this application may be sent to:

T. H. Davis, President,
Piedmont Aviation, Inc.,
Smith Reynolds Airport,
Winston-Salem, N. C.

and

W. P. Sandridge,
Womble, Carlyle, Martin & Sandridge
Wachovia Bank Building,
Winston-Salem, N. C.

Dated at Winston-Salem, N. C.,
this 8th day of March, 1945.

[R. 214]

BEFORE THE

CIVIL AERONAUTICS BOARD

In the Matter of APPLICATION OF PIEDMONT AVIATION, INC. under Section 401 of the Civil Aeronautics Act, as amended, for amendment of certificates of public convenience and necessity	Docket No. 1422

APPLICANT'S AMENDMENT NO. I

PIEDMONT AVIATION, INC. ("Applicant"), having filed its application in the above entitled matter, seeking the authority to operate scheduled airmail pick-up and local passenger air service, hereby amends said application as follows (without limiting its generality as stated in other parts thereof):

I.

Applicant amends Paragraph 1. of said application by eliminating the word "combination" to read as follows:

> "The Applicant, Piedmont Aviation, Inc., whose address is Smith Reynolds Airport, Winston-Salem, N. C., hereby applies for a permanent and/or temporary Certificate of Public Convenience and Necessity under Section 401 of the Civil Aeronautics Act of 1938, as amended, and such other sections thereof and such orders and regulations of the Board as may be applicable, for the authorization to engage in scheduled air transportation as an air carrier of passengers, mail and property, in local and feeder passenger service and mail, express and property pick-up service on the routes detailed herein, or such modification of such routes as the Board may find public convenience and necessity require."

II.

Applicant amends Section 3 and Section 4, entitled "Authority Sought", of said application, as follows:

AUTHORITY SOUGHT.

3. Applicant seeks certificate or certificates of public convenience and necessity, either permanent or temporary, authorizing the scheduled transportation by air of mail, express and property using the pick-up method over each of the following routes:

ROUTE 1. Between the terminals of Charlotte, N. C., and Norfolk, Va., via the intermediate points Davidson; Mooresville; Salisbury; Lexington; Thomasville; Asheboro; High Point; Greensboro; Reidsville, N. C.; Danville, Va.; Roxboro, N. C.; South Boston, Va.; Chase City; Victoria; Blackstone; Petersburg; Hopewell; Richmond; Williamsburg; Newport News, Va.

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ROUTE 2. Between the terminals of Charlotte, N. C., and Norfolk, Va., via the intermediate points Concord; Albemarle; Troy; Pinehurst; Carthage; Sanford; Raleigh-Durham; Wake Forest; Franklinton; Oxford; Henderson; Warrenton; Littleton; Roanoke Rapids, N. C.; Emporia, Va.; Franklin; Suffolk, Va.

ROUTE 3. Between the terminals of Charlotte, N. C., and Atlanta, Ga., via the intermediate points York, S. C.; Gaffney; Spartanburg; Woodruff; Fountain Inn; Greenville; Williamston; Anderson; Seneca, S. C.; Toccoa, Ga.; Cornelia; Gainesville; Buford; Roswell; Marietta, Ga.

ROUTE 4. Between the terminals of Raleigh-Durham, N. C., and Asheville, N. C., via the intermediate points Chapel Hill, N. C.; Mebane; Burlington; Gibsonville; Greensboro; Winston-Salem; Mocksville; Statesville; Newton; Hickory; Lenoir; Morganton; Marion; Swannanoa, N. C.

ROUTE 5. Between the terminals of Raleigh-Durham, N. C., and Norfolk, Va., via the intermediate points Wendell, N. C.; Wilson; Rocky Mount; Tarboro; Greenville; Washington; Williamston; Plymouth; Edenton; Hertford; Elizabeth City, N. C.; Virginia Beach, Va.

ROUTE 6. Between the terminals of Charlotte, N. C., and Wilmington, N. C., via the intermediate points Monroe; Wadesboro; Rockingham; Laurinburg; Lumberton; Whiteville, N. C.

ROUTE 7. Between the terminals of Raleigh-Durham, N. C., and Wilmington, N. C., via the intermediate points Clayton; Smithfield; Goldsboro; La Grange; Kinston; New Bern; Cherry Point; Beaufort; Jacksonville; Wallace; Burgaw, N. C.

ROUTE 8. Between the terminals of Charlotte, N. C., and Knoxville, Tenn., via the intermediate points Gastonia; Lincolnton; Kings Mountain; Shelby; Cliffside; Rutherfordton; Tryon; Asheville-Hendersonville; Canton; Waynesville, N. C.; Newport, Tenn.

ROUTE 9. Between the terminals of Winston-Salem, N. C., and Washington, D. C., via the intermediate points Madison; Leaksville, N. C.; Martinsville, Va.; Rocky Mount; Roanoke; Clifton Forge; Lexington; Buena Vista;

Waynesboro; Staunton; Harrisonburg; Shenandoah; Luray; Front Royal; Winchester, Va.; Martinsburg, W. Va.; Hagerstown, Md.; Frederick, Md.

ROUTE 10. Between the terminals of Winston-Salem, N. C. and Washington, D. C., via the intermediate points Greensboro; Reidsville, N. C.; Danville, Va.; Chatham; Alta Vista; Lynchburg; Farmville; Crew; Blackstone; Petersburg; Hopewell; Richmond; Ashland; Charlottesville; Orange; Culpepper; Warrenton; Manassas, Va.

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ROUTE 11. Between the terminals of Lynchburg, Va., and Knoxville, Tenn., via the intermediate points Bedford; Roanoke; Blacksburg; Radford; Pulaski; Wytheville; Marion; Saltville; Abingdon, Va.; Tri-Cities, Tenn., (Johnson City, Bristol, Kingsport); Greenville; Rogersville; Bulls Gap; Morristown; Jefferson City; Mascot, Tenn.

ROUTE 12. Between the terminals of Charlotte, N. C., and Charleston, S. C., via the intermediate points Fort Mill, S. C.; Rock Hill; Chester; Great Falls; Lancaster; Kershaw; Camden; Columbia; St. Matthews; Orangeburg; Bamberg; Branchville; St. George; Summerville, S. C.

ROUTE 13. Between the terminals of Winston-Salem, N. C., and Charleston, W. Va., via the intermediate points Elkin, N. C.; Mt. Airy, N. C.; Galax, Va.; Pulaski; Bluefield; Princeton, Va.; Mullens, W. Va.; Beckley; Oak Hill; Montgomery; Belle, W. Va.

ROUTE 14. Between the terminals of Raleigh, N. C., and Columbia, S. C., via the intermediate points Dunn, N. C.; Clinton; Fayetteville; St. Pauls; Lumberton; Fairmont, N. C.; Dillon, S. C.; Mullens; Marion; Florence; Darlington; Hartsville; Bishopville; Sumter, S. C.

ROUTE 15. Between the terminals of Atlanta, Ga., and Columbia, S. C., via the intermediate points Lawrenceville; Winder; Athens; Elberton, Ga.; Calhoun Falls; Abbeyville; Greenwood; Laurens; Whitmire; Newberry; Winnsboro, S. C.

4. In addition to towns and cities serviced by direct air service, the Applicant proposes messenger service for towns lying immediately adjacent to those having direct service.

ROUTE 1. Cornelius, N. C., from Davidson, N. C.; Spencer, N. C., from Salisbury, N. C.; Phoebus, Va., Fortress Monroe, Va., and Hampton, Va., from Newport News, Va.

ROUTE 2. Kannapolis, N. C., from Concord, N. C.; Weldon, N. C., from Roanoke Rapids, N. C.; Aberdeen, N. C., and Southern Pines, N. C., from Pinehurst, N. C.

ROUTE 3. Belton, S. C., and Pelzer, S. C., from Williamston, S. C.; Simpsonville, S. C., from Fountain Inn, S. C.

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ROUTE 4. Graham, N. C., and Haw River, N. C., from Burlington, N. C.; Elon College, N. C., from Gibsonville, N. C.; Kernersville, N. C., from Greensboro, N. C.; Cooleemee, N. C., from Mocksville, N. C.; Conover, N. C.,

from Newton, N. C.; Granite Falls, N. C., from Hickory, N. C.; Valdese, N. C., from Morganton, N. C.

ROUTE 5. Portsmouth, Va., from Norfolk, Va.

ROUTE 6. Hamlet, N. C., from Rockingham, N. C.; Maxton, N. C., from Laurinburg, N. C.; Chadbourn, N. C., from Whiteville, N. C.

ROUTE 7. Selma, N. C., from Smithfield, N. C.; Morehead City, N. C., from Beaufort, N. C.

ROUTE 8. Belmont, N. C., and Mount Holly, N. C., from Charlotte, N. C.; Bessemer City, N. C., and Dallas, N. C., from Gastonia, N. C.; Spindale, N. C., and Forest City, N. C., from Rutherfordton, N. C.; Caroleen, N. C., and Henrietta, N. C., from Cliffside, N. C.; Hazelwood, N. C., from Waynesville, N. C.; Alcoa, Tenn., and Marysville, Tenn., from Knoxville, Tenn.

ROUTE 9. Mayodan, N. C., from Madison, N. C.; Draper, N. C. and Spray, N. C., from Leaksville, N. C.; Fieldale, Va., from Martinsville, Va.; Salem, Va., from Roanoke, Va.; Covington, Va., from Clifton Forge, Va.; Williamsport, Md., from Hagerstown, Md.

ROUTE 10. Ettrick, Va., from Petersburg, Va.

ROUTE 11. Salem, Va., from Roanoke, Va.; Christiansburg, Va., from Blacksburg, Va.; Elizabethton, Tenn., from Tri-Cities, Tenn.

ROUTE 12. Denmark, S. C., from Bamberg, S. C.

ROUTE 13. Jonesville, N. C., from Elkin, N. C.; Fries, Va., from Galax, Va.; Mt. Hope, W. Va., from Oak Hill, W. Va.; Eagle, W. Va., and Boomer, W. Va., from Montgomery, W. Va.; Marmet, W. Va., from Belle, W. Va.

ROUTE 14. Erwin, N. C., and Benson, N. C., from Dunn, N. C.; Latta, S. C., from Dillon, S. C.

ROUTE 15. Clinton, S. C., from Laurens, S. C.

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Application adds, after amended Sections 3 and 4, a new Section to be numbered "4-A", which is to read as follows:

4-A. Applicant seeks a certificate or certificates of Public Convenience and Necessity, either permanent or temporary, authorizing the scheduled transportation by air of passengers, mail, express and property over each of the following routes:

ROUTE 1. Between the terminals of Winston-Salem, N. C. and Washington, D. C., via the intermediate points Martinsville, Va.; Roanoke, Va.; Covington-Clifton Forge, Va.; Lexington, Va.; Waynesboro, Va.; Staunton, Va.; Harrisonburg, Va.; Winchester, Va.; Martinsburg, W. Va.; Hagerstown, Md.; Frederick, Md.

ROUTE 2. Between the terminals of Norfolk, Va., and Roanoke, Va., via the intermediate points Richmond; Petersburg; Farmville; Lynchburg, Va.

ROUTE 3. Between the terminals of Wilmington, N. C., and Knoxville, Tenn., via the intermediate points Lumberton, N. C.; Pinehurst, N. C.; Rockingham, N. C.; Wadesboro, N. C.; Monroe, N. C.; Charlotte, N. C.; Gastonia, N. C.; Shelby, N. C.; Asheville-Hendersonville, N. C.

ROUTE 4. Between the terminals of Columbia, S. C., and Asheville-Hendersonville, N. C., via the intermediate points Greenwood, S. C.; Anderson, S. C.; Greenville, S. C.

ROUTE 5. Between the terminals of Winston-Salem, N. C., and Columbia, S. C., via the intermediate points Salisbury, N. C.; Concord, N. C.; Charlotte, N. C.; Rock Hill, S. C.; Chester, S. C.; Lancaster, S. C.; Camden, S. C.

WHEREFORE, the Applicant prays that this Amendment No. 1 to its said application, which has been consolidated with other applications for hearing in the so-called "South Eastern States Case", be considered and acted upon by the Board in said consolidated proceeding and that said application as amended be granted.

Respectfully submitted,

PIEDMONT AVIATION, INC.

By: /s/ T. H. DAVIS
T. H. Davis,
President

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STATE OF NORTH CAROLINA }
COUNTY OF FORSYTH } ss.:

T. H. DAVIS, being first duly sworn according to law, on oath deposes and says, that he is President of PIEDMONT AVIATION, INC., applicant in the above entitled proceeding; that he has read the foregoing Amendment Numbered One and knows the contents thereof; that the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that to his best information and belief all statements contained in the foregoing Amendment Numbered One to the Application are true and no such statement is misleading; that to his knowledge the foregoing Amendment Numbered One to the Application does not omit any facts known to Applicant which would be deemed by the Board to be of importance to them in reaching a determination in connection therewith.

PIEDMONT AVIATION, INC.,
Smith Reynolds Airport,
Winston-Salem, N. C.

/s/ T. H. DAVIS
T. H. Davis, President

Subscribed and sworn to before me this 8th day of March, 1945.

/s/ M. F. FARB
Notary Public for North Carolina

My Commission expires May 16, 1946.

3. State Airlines Inc., Exhibits, Record Vol. 18 (R. 9396-9717).

[R. 9397]

INDEX OF EXHIBITS

Exhibit Number	Number Pages	
STA-G	13	H. K. Gilbert's Statement
STA-P	3	E. H. Pickering's Statement
STA-1	2	Names and Qualifications of Witnesses, as far as now known.
STA-2	3	Cities and States served by State's proposed routes.
		P. 1—Proposed Routes included in this set of exhibits.
		P. 2—Alphabetical List of Cities and States on proposed routes.
		P. 3—List of States to be served, showing cities thereon with route numbers.
		ECONOMIC STRENGTH AND RESOURCES OF TERRITORY TO BE SERVED BY STATE AIRLINES, INC.
STA-3	4	Population of Cities to be served, showing comparative growth by region.
STA-4	1	Population of Cities to be served, showing comparative growth by routes.
STA-5	1	Classification of Cities to be served according to population within a 25 mile radius.
STA-6	4	Economic Characteristics of Cities to be served by region.
STA-7	1	Selected Economic Characteristics of Cities grouped according to routes.
STA-8	1	National Economic Ranking of Cities on State's proposed routes that had air service in 1939.
STA-9	2	Population of States to be served, showing comparative growth by region.

Exhibit Number	Number Pages	
STA-10	1	Economic Characteristics of States to be served by region.
STA-11	2	Growth of Manufacturing in areas to be served, compared with Middle Atlantic states.

EXISTING AND PROPOSED TRANSPORTATION FACILITIES IN TERRITORY TO BE SERVED BY STATE AIRLINES, INC.

STA-12	6	Showing By Regions Time Savings of proposed service over existing means of transportation.
STA-13	13	Showing By Routes Time Savings of proposed service over existing means of transportation.
STA-14	5	Showing By Regions Fare and Mileage Savings of proposed service over existing service.
STA-15	3	Showing By Routes Present and Proposed Air Mileages and Percentage Savings between the cities that now have air service authorized.
STA-16	1	Comparison of Selected Air Passenger Fares.
STA-17	2	Nearest Airline Stop and Number of Schedules for cities on State's proposed routes without air service authorized.
STA-18	1	Lack of Adequate Rail Transportation in states to be served, as shown by highway data.

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AIR AND FIRST CLASS MAIL DATA FOR TERRITORY TO BE SERVED BY STATE AIRLINES, INC.

STA-19	2	Air Mail and First Class Mail Statistics for cities on State's proposed routes.
STA-20	1	Outgoing Air Mail Poundage from 20 of the 36 cities included in June 1940 Survey of

Exhibit Number	Number Pages	
		21 State cities which had air mail service during Survey period.
STA-21	2	Percent Miles Saved and Pound Miles Saved for outgoing air mail from 20 of 36 cities to 21 State cities that had service during and for the Survey period.

TRAFFIC POTENTIAL IN TERRITORY TO BE SERVED BY STATE AIRLINES, INC.

STA-22	19	Need For Routes shown by 45 months actual operating experience.
STA-23	1	Comparison of State Non-Scheduled Service with 1933 Rail and March 1941 Air.
STA-24	1	Showing Predominance of Local Air Traffic over long distance air traffic in area to be served.
STA-25	1	Effect of Adding Additional Schedules.
STA-26	1	Showing the Relation of Increased Traffic to Mileage Saved by the inauguration of a new route.
STA-27	2	Showing the Effect of the Volume of 1933 Rail Traffic, Frequency of Service, and Overall Cost on air traffic for over- and under 150 ground miles.
STA-28	2	The Growth of Air Traffic in the area of State Airlines' proposed routes.
STA-29	1	Air Traffic at Cities on State's proposed routes that have air service.
STA-30	8	Showing the Air Traffic of Cities having air-line service in terms of economic characteristics and determination of typical ratios.

Operating Forecasts for Routes to be Served by State Airlines, Inc.

Exhibit Number	Number Pages	
STA-31	9	Estimate of Traffic to be produced by cities on State's proposed routes.
STA-32	3	Air Mail Estimate.
STA-33	4	Revenue Estimate. (Revised p. 4 included.)
STA-34	4	Proposed Schedules.
STA-35	5	Connections.
STA-36	1	Plane Utilization, showing layover times at terminal points, and daily flying time.
STA-37	2	Exhibit showing proposed route and scheduled mileage and time.
STA-38	2	Exhibit showing Capital Expenditures.
STA-39	1	Exhibit showing Estimated Gasoline, Oil, and Insurance expenses.
STA-40	1	Exhibit showing Estimated Crew expenses.
STA-41	1	Exhibit showing Summary of Flying Operations expense.

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STA-42	1	Exhibit showing Estimate of Flight Equipment Maintenance—direct expense.
STA-43	1	Exhibit showing Depreciation—Flight Equipment.
STA-44	3	Exhibit showing Estimated Ground Operations expense.
STA-45	1	Exhibit showing Ground Equipment Maintenance—direct.
STA-46	1	Exhibit showing Estimated Expenses Maintenance—indirect.

Exhibit Number	Number Pages	
STA-47	1	Exhibit showing Estimated Passenger Service expenses.
STA-48	1	Exhibit showing Estimated expenses for Traffic and Sales.
STA-49	1	Exhibit showing Estimated Advertising and Publicity expense.
STA-50	1	Exhibit showing Estimated General and Administrative expense.
STA-51	1	Exhibit showing Estimated Depreciation of Ground Equipment.
STA-52	1	Exhibit showing Summary of Operating Expenses.
STA-53	7	Exhibit showing Estimated Operating Expenses for selected route combinations.
STA-54	5	Exhibit showing Operating Expense Estimates for two selected route combinations, using smaller aircraft.
STA-55	4	Exhibit showing Operating Expense Estimates for two selected route combinations, eliminating stewards and food service.
STA-56	4	Exhibit showing Operating Expense Estimates for two selected route combinations, writing off equipment in three years with no residual value.
STA-57	3	Short Haul Aircraft Developments.
STA-58	1	Weather Record.
STA-59	4	Cost Per-Seat Mile Analysis of Selected Applicants.

History

Exhibit Number	Number Pages	
STA-60	9	History of State Airlines, Inc.
STA-61	1	Counter Circular for present State Airlines operations.
STA-62	1	Rates and Tariff Rules for present State Airlines operations.
STA-63	1	State Non-Scheduled Ticket Form.
STA-64	7	Certificate of Incorporation of State Airlines, Inc.
STA-65	8	By-Laws of State Airlines, Inc.
STA-66	2	Aviation Experience of State Airlines Employees.

Maps

STA-67	1	Map of Proposed State Airlines, Inc. Routes.
STA-68	1	Map of Proposed State Routes and Existing Air Routes.
STA-69	1	Regional and Topographical Map.
STA-70	1	Map of Through Rail Routes.
STA-71	1	Map of Existing Air Route Pattern.

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Financial

STA-72	1	Balance Sheet of State Airlines, Inc., as of February 28, 1945.
STA-73	1	Names of Officers, Directors, and Principal Stockholders of State Airlines, Inc.
STA-74	2	Affidavits of Citizenship and Stock Ownership.
STA-75	2	Letter from Hallgarten & Company. Balance Sheet of Hallgarten & Company.

MISCELLANEOUS

Exhibit Number	Number Pages	
STA-76	21	Possible Diversion from existing carriers by proposed State routes, and 1933 Rail Report Traffic.
STA-77	3	Duplication of existing routes by State's proposed routes.
STA-78	3	Diversion of Delta's Route No. 54.
STA-79	2	Comparison Integration State with Existing Routes.
STA-80	3	Airport Facilities on State's proposed routes.
STA-81	17	Hotel Registrations and similar data for cities on State's proposed routes.
STA-82	46	Transcript of Dr. Brown's testimony in Docket 570 et al.

Exhibit STA-G [R. 9401]

STATE AIRLINES, INC.

Statement of

Henry K. Gilbert, Jr., President

The certification of State's proposed routes will mark a milestone in the development of air transportation for the Southeast. Examination of State's exhibits reveals the importance of the service it proposes and of the area to be served. This logical and practical proposal presents an opportunity that deserves and warrants, for maximum development, the establishment of a carrier devoted to its fulfillment.

As mentioned on page 1 of Exhibit STA-60, State's sole objective is an intensive cultivation of air traffic. To clear up an oft-repeated question of the designation (feeder, trunk line, local, regional, etc.) under which this objective will be achieved, there is, apparently, no universally accepted definition. The nearest Board interpretation is contained, it is believed, in the Board's order, dated March 22, 1943, instituting the Feeder Investigation. In that order it stated that the purpose of the investigation would be to determine, in part, "the propriety of extending air transportation to communities . . . to which such transportation may not appear warranted under usual economic considerations or under existing standards of service."

Without an exact definition by the Board of "usual economic considerations" or "existing standards of service", if it is assumed that the former refers to the .3 mill pound-mile mail rate and that State's methods of operation meet the latter, State would fall into the trunkline or feeder category subject to the routes for which it may be certificated. Page 4 of Exhibit STA-33 shows that 2 of 6 possible route combinations would not require over the .3 mill rate to make a profit; yet even these would require a higher rate, if depreciation were on a three-year basis. However, even the other four

combinations, or that of all twelve routes, would not require, under normal growth, a higher rate in years subsequent to 1946 on the same basis as the 1946 estimates.

A reduction or addition in the number of communities served along any route would only affect the designation as it affects the need for mail pay. Possibly an apt designation would be "local" or "short line" in view of the average length of State's routes of 545 miles.

Policies

State believes that, in order to develop the maximum in air transportation, the general policies to be adopted are of prime importance. The following represent State's views regarding such policies.

Safety

State places major emphasis on safety for scheduled operations, as it has on non-scheduled operations. The emphasis on safety is discernible in its exhibits on proposed scheduled operations. It will have, as indicated, adequate maintenance, engineering, meteorological, and dispatching staffs. The equipment proposed is thoroughly proven.

In non-scheduled service, with two exceptions, only instrument-rated pilots have been used, operations and ground personnel manuals compiled, log sheets for every trip utilized, and rigid adherence to 50 and 100 hour checks maintained. As mentioned in the History (page 7, STA-60), inauguration of service was delayed several months in order to rework aircraft which had been licensed and approved by the manufacturers before the aircraft were considered safe to operate.

Within the past nine months, State, with the cooperation of the manufacturer and the CAB, was responsible for a specification change in Warner motors which reduced or eliminated a hazard that had caused numerous power-plant failures among the hundreds in service in aircraft throughout the country.

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Closely related to safety is comfort, since a passenger's confidence in a safe operation makes the passenger feel at ease. At the same time, physical comfort without overcrowding likewise instills a feeling of safety. Thus State's operations are predicated not only on technically safe procedures, but also on physically comfortable transportation.

Quality

The quality of State's approach to scheduled operations, as in non-scheduled operations, is obvious. State was the first to foresee the need for scheduled service of a number of routes for which certificated and new applicants subsequently filed. State developed the estimation of traffic based on completeness of service, a method since adopted by one of the "big-four" airlines. State has rendered an economical non-scheduled service, yet there has been a constant emphasis by State on quality. For its scheduled operations, State proposes nothing lavish or deluxe but does propose to provide a quality service. State does not propose to cheapen air service.

Economy

The estimated operation costs, 68.7¢ per mile for DC3's (Exhibit STA-52) versus 54.74¢ per mile for Mid-Continent Airlines on Lockheed 10's in 1939, show that State intends to operate economically. Its balance sheet shows that in the past it has operated economically, taking into account its activities in developing and providing non-scheduled service, its planning for the future, and its participation in four hearings to date before the Civil Aeronautics Board, together with the employment of numerous experts.

As elaborated on elsewhere, State expects to develop operating and passenger-handling procedures, methods, and equipment which will induce further economies. However, State does not propose to revert to substandard, discarded methods, such as elimination of reservations, use of cramped

aircraft, obsolete or unproven, for scheduled services, or elimination of passenger service to the extent that passengers are repelled rather than attracted.

In State's opinion economies are possible, giving substantially the same service as rendered on scheduled airlines today, by developing better methods and equipment. My personal experience has been along such lines. The bus company that I was connected with gave low-cost transportation between points such as Chicago and St. Louis, and St. Louis and Kansas City. But it provided the first reclining chairs of any line over these routes and preceded the railroads and the airlines in this respect. Subsequently other companies whom the writer represented in the automotive field made equipment such as brake drums and wheels which had a much higher initial cost than competitive products, but because of mechanical improvements gave far more economical service.

Other than through technical improvements and integrated route structure, economical operation will depend on the number of personnel used. In Eastern's mail-rate hearing, its president testified that Eastern's economy was due to so few personnel used. State's costs reflect the fact that a maximum number of passenger miles and revenue plane-miles will be achieved per employee. There is not, and has not been, nor will there be, any deadwood in State's organization.

Frequency

A survey made by State in 1940 through a questionnaire addressed to individuals in six southern cities showed that, excluding safety, frequency was the most important travel factor. State's experience has confirmed this. Thus, while State proposes the DC3, it expects in the future to use planes of similar or lesser capacity so that additional traffic will be accommodated by additional schedules. Yet, as far as possible, such schedules will be independent of mail pay. This

will mean extra schedules available to the Post Office at no extra expense. State believes that highway restrictions on the size of buses have been a factor in the growth of bus transportation, extra traffic requiring extra schedules and adding to the frequency.

State's routes have been planned so that even with a maximum of two schedules per day over each, additional schedules, necessary for short-haul traffic, will be provided by paralleling its own and existing services between short-distance

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points, such as Charlotte to Columbia, thus making air travel practical and convenient. State's non-scheduled operations, offering the maximum in frequency, have shown the need for short-distance air-travel trips averaging less than for any interstate scheduled carrier. It may be noted that many of the passengers who have used this service in the Carolinas are the lesser employees of large firms, whose heads travel to New York and Washington, but who themselves, within a smaller area, constitute a larger proportion of the travel used.

In this connection it should be pointed out that air service for distances of 85 to 200 miles between such points as Charlotte and Columbia is highly desirable to a traveler who would use his car in preference to the bus or train simply because air travel is the only medium that is faster than his car. But it is a fallacy also to assume that the automobile is the alternative, since much local travel is used by representatives of companies, like the Lerner Shops (who spent over $50,000 a year on air travel prior to the war) whose headquarters may be in New York or Chicago, but who reach the Carolinas or other sections by air without their cars and are dependent upon public transportation to cover the cities in the Carolinas.

Also in connection with local travel, it is a fallacy to assume that the high cost of airport transportation is a deterrent to local air trips. In many cities, such as Charlotte, the additional cab fare and time from hotel and residential

neighborhoods to the airport are only a slight increase over those to the bus or railroad station. The Charlotte airport fare is 75¢. The minimum fare within the city is 50¢. Including a few minutes to purchase a ticket and make a bus or rail connection, the extra miles over the uncongested roads to reach the airport on the average would not add more than 25 to 50% of the time necessary to allow.

Another important consideration is that local air travel is frequently used by families who have only one car. Thus only when a husband makes an out-of-town trip does the wife enjoy the use of the car. Yet, because of its greater speed, air travel and only air travel replaces the car. However, to induce such travel to go regularly by air, seating comfort comparable to that in a private car should be given. State realized this and was able to incorporate reclining seats in its first two planes, probably the only such installations ever made in three-place aircraft. Other comfort innovations were the use of headrests, special ventilators, convenient ash receivers, curtains, magazine and paper compartments, assist cords, dome lights, sound proofing, and boarding steps.

State has frequently had trips which were handled so that on receipt of the flight plan prior to the plane's return, the passenger's wife would be notified by telephone so as to be at the airport on his arrival. In other cases, the passenger has, of course, parked his car at the airport pending his return. On occasion, passengers have parked U-Drive-It cars at the airport which they had rented to call on customers in the vicinity of Charlotte, but before completing their calls in that area had a need to contact a more distant customer.

The local travel need by residents of a city may well be indicated by telephone calls from that city. The Charlotte city exhibit in Docket 570 et al. showed the telephone record on pages 114 and 115. In the first ten cities there were seven, all over 70 miles away by road, to and from which it is possible to travel by car in a day without remaining away overnight. These cities and their rank is as follows:

Greensboro	2	Spartanburg	6
Columbia	3	Charleston, S. C.	9
Raleigh	4	Asheville	10
Winston-Salem	5		

For trips to and from these cities, frequent, fast, economical air service would be a convenience and a service which Charlotte and other cities along State's proposed routes have not had. For example, although there are now eleven flights daily into Charlotte, more than at any time in the past, only two stop at both Charlotte and Greensboro and both are before dawn and unsuitable for local service. Like-

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wise, only two of the eleven flights stop at both Charlotte and Raleigh-Durham and these pass each other en route so that a round trip cannot be made in a day.

Summarized, frequency of service is the most practical answer to providing public convenience. Exhibit STA-23 shows what State accomplished, with far inferior equipment, by offering frequency between Charlotte and Columbia. Furthermore, in State's case, where the routes do not follow fast existing ground service, it is feasible to stop at all points on all schedules, thus rendering a complete coverage for both small and large communities, and still to surpass surface travel time. Along many existing air routes such as those paralleling the New York Central Railroad and Pennsylvania Railroad, who plan postwar 120 m. p. h. locomotives, such service is not feasible to towns located directly on the main line and served by the fast trains. In such cases, only skip-stop service, which is less complete and has a small potential market, can be used.

Progressiveness

State also considers it an important policy to be progressive, to continually seek improved methods and equipment, taking into account not only present but future needs. A number of examples of progress sought and already achieved

are cited elsewhere. It might be noted that State's progressiveness is also characterized by the facts that its beginning was based on a survey of national needs; that it established, so far as is known, the first non-scheduled rates based on passenger miles flown which are on record with the tariff section of the CAB; that it replaced its aircraft during the war with superior equipment; that it presented in the Feeder Investigation, as far as is known, the only complete analysis of all possible existing types of aircraft; that in this case it is offering the only analysis of development in short-haul aircraft (Exhibit STA-57); and that it is a charter member of the Feeder Airline Association, formed to promote short-haul travel.

Concentration

Another State policy has been to concentrate solely on its projected future as a scheduled air carrier, on the ground that successful operation of its proposed routes merits and requires the full energies of a single carrier and that the preparation, therefore, should not be diluted by other activities. Consequently, State has no commitments in the form of property leases, aircraft distributorships, manufacturing contracts or sales agreements which would retard effective operation of any or all of the proposed routes or portions thereof. State's only representations have been to the Board, the communities it has asked to serve, and its stockholders, that it would endeavor to furnish the service proposed.

If certificated, State plans to concentrate on rendering the maximum amount of air service possible and, in order to do so, to develop local air service to the best of its ability.

Form of Certificate

In accordance with its applications, Docket Nos. 1711 and 1776, in this proceeding, State will accept a temporary and/or a permanent certificate so as to permit the Board to certificate either routes or cities on either basis or both bases, simul-

taneously. State will also accept a certificate containing such restrictions as the Board may deem necessary.

While State is willing to accept a certificate for a three-year period, even though effective as of the date of issuance, it believes that the public interest would be better served by at least a five-year period and that a period of twelve months or longer should be allowed for inauguration of service. Although service might be inaugurated in a much shorter period, the speed with which it must be done will affect the quality and cost of operation. Better personnel, prices, and equipment can be obtained if adequate time is allowed to commence operations and to render under temporary authorization the service certificated.

[R. 9405]

ORGANIZATION

Financing

State is very probably as strong financially as any new applicant. That is not reflected in the balance sheet, which is primarily a record of what funds have been spent, since stockholders have supplied and intend to continue to supply cash as required. State's financial strength lies in the fact that it has the support of its stockholders, who are for the most part individuals of large means, and of Hallgarten and Co., leading underwriting firm.

State has not obtained firm commitments from its stockholders since the Docket 570 et al hearing for the reasons that until the Board's consolidation order there was no definite assurance as to the time at which a hearing would be held, which State asked to be postponed pending a decision in the former proceeding, and that because of the absence in the Armed Forces of stockholders having the largest interests, no adequate representation could be made, nor plans for an underwriting among the stockholders mutually agreed upon. It is well known in financial circles that the net worth of the stockholders of State Airlines, Inc., totals in the millions.

State has received assurances from several of its stockholders whom it has been able to contact that in the event a certificate were granted, they would purchase additional stock in substantial amounts. Such stockholders include:

A. B. Ashforth, Jr.
E. R. Bagarozy
W. W. Brinckerhoff
P. M. Carter
H. D. Gilbert
H. K. Gilbert, Jr.
K. S. Gillespie
P. H. Ickelheimer
J. L. Kemmerer, Jr.
H. W. Klotz
J. Kotula

In addition, those persons holding options on stock, which include H. K. Gilbert, Jr., H. W. Klotz, and A. Pagenstecher, III, have stated that in the event a certificate were issued, they would take up these options, which will give the company a net cash position of over $100,000.

Furthermore, on account of the large possible scope of its proposed operations, in Docket 570 et al. and in the present proceeding, the testimony is given of one of the Nation's well known and highly respected underwriters, Hallgarten & Co., which has participated in financing large existing companies, such as American Airlines, Pan American, TWA, American Export, and, in the last two months, the TACA system. In addition, in the event that a certificate is granted, it is anticipated that, provided there is any public sale, distribution would be offered by Hallgarten & Co. through local underwriters.

It will be seen, then, that not only does the ownership of the stock of State rest in the hands of those who could and would finance an operation without outside aid, but that State has the further support of an underwriter which is skilled in the field of the sale and distribution of airline securities. It is twice armed.

We should perhaps add that this financial position has been deliberately assumed by State, which has preferred not to enter into any agreement which would be in a sense a

conjecture of its precise future standing and requirements as a scheduled airline operator and would bind it to financial arrangements which might be less favorable to it than those available at the time of obtaining a certificate.

Citizenship

The citizenship of State is established by Exhibits STA-73 and STA-74.

Ownership in Other Carriers

Witnessed statements and letters have been received from all officers, directors, and principal stockholders showing [R. 9406] that there is no voting control over State by any one of these individuals who have an interest in other carriers and that with the exception of one stockholder who has an estate interest in a small motor-truck line, none exercise control over any other surface or air carrier or over any company engaged in any other phase of aeronautics.

The total number of State stockholders is 52. It is a fact that most of these stockholders have held stock since 1939, that most of the principal stockholders have added to their original purchases, and that among the 52 stockholders there have been only two transfer sales of stock in the history of the company. Thus State's stockholders, who include many persons of substantial means and who have negligible other transportation interests, have demonstrated a strong faith in the future of their company and form a solid group to carry through State's proposed scheduled operations.

Personnel

As stated in Exhibit STA-66, State plans to employ for scheduled operations the best personnel obtainable. It has an agreement with Col. Lowell S. Harding, former Airlines

War Training Institute official, CAA regional air carrier inspection chief, and operations vice-president for a certificated carrier, that he will be offered a position in the operations department. The company is in touch with other men specializing in various types of airline work and has determined that they would be available on short notice, although because of their present positions their names cannot be divulged.

The period of a year suggested as an allowance to inaugurate service is not due to unavailability of personnel, but to complete financing, permit new key employees to give adequate notice to their present employers, plan department procedures, including setting up of operations and maintenance manuals, train employees, and supervise acquisition and overhaul, if necessary, of flight and ground equipment. Actually securing equipment and making it suitable for service will probably be the limiting time factor, since suitable aircraft and ground equipment cannot at present be purchased ready for service. Conversion of stock options and sale of additional stock or loans from the stockholders will give it sufficient funds to contract for conversion or construction of aircraft and other equipment and immediately to employ a few key personnel.

It may be noted that although all twelve routes would require only about 650 personnel, the prospects for future additional employment are considerable if the tenfold expansion of the industry between 1930 and 1940 would be equally applicable to the postwar decade. Technological developments, increased acceptance by the public, and carriage of cargo and first-class mail may mean a greater increase.

It might be noted that the past quality of State's personnel has been high. State's first two pilots included a man who is now a major in the Army Air Corps, and who, as air safety inspector in charge of over 200 AT6's successively at two advanced primary schools, has received

several commendations from his commanding officers. Since leaving State the second pilot, who also acted as State's mechanic, has been in charge of final inspection and test at the Trenton plant of the Eastern Aircraft Division of General Motors, with a staff of 250 men under him. Both have expressed a desire to rejoin State at the close of the war. Subsequent pilots, with a single exception, have either come to State directly from the airlines or left State to go directly with the airlines.

Past directors of State have included the following men, all stockholders, who have had to sever their connection because of unavailability: W. W. Brinckerhoff, presently in charge of the allocation of surplus aircraft to foreign purchasers; C. K. Hubbard, Lieutenant, USNR, aboard aircraft carrier in the Pacific; P. M. Carter, president of Pressurelube, Inc., having 600 employees on war contracts; Douglas Robinson, member of CAA non-scheduled flying advisory committee; and John deC. Blondel, president of the Blondel Coal Co. and presently Lieutenant Commander, USNR, with pilot rating on four-engine planes, based at Honolulu.

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Operation Features

Integration

Reference to the maps of State's proposed routes, Exhibits STA-67 and STA-68, shows the complete integration that these routes would provide. Exhibit STA-79 compares the integration of a selected route combination with routes of Delta and PCA. A description of the relative integration for six selected combinations of routes and of all twelve proposed routes is given on page 3 of Exhibit STA-33.

This integration, whereby a considerable number of route points are common to other routes, effects considerable economy. For example, Routes 4, 5, and 12 involve altogether only two points not included in other routes. It also makes possible an almost unlimited amount of connecting

service. The large number of pairs of points that would be given one-carrier service is described on page 1 of Exhibit STA-35, and the connections that would be made at many of the common route points, both with State's own service and with that of other carriers, are listed on pages 2 to 5 of the same exhibit.

It is important to note that this integration is achieved by routes which vary widely as to their purpose in having different intermediate points, different terminals, or both. The effect would be a complete service which, together with existing routes, would make air transportation practical throughout the Piedmont and between the Piedmont and points beyond. The more complete the coverage provided, the more use will be made of that already in existence. It might literally be said to cover, in Mr. Pogue's words, "the acres of diamonds right in our own back yard".

Equipment

State's proposed use of equipment takes into account availability, reliability, and the cost per seat-mile of aircraft. In proposing DC3's, however, State is nevertheless willing to use any smaller aircraft and as a sample of such willingness has included costs of Lodestars. State, as previously mentioned, wishes to use the smallest multimotored aircraft that will break even at a reasonable load factor, without the need for mail pay. As depicted in Exhibit STA-57, it looks forward to the development of newer, smaller, and better aircraft than the DC3, but submits that there is insufficient information on aircraft under development to predicate its operations on their use. Furthermore, if State is certificated on a temporary basis for three years, it realizes, in view of its past experience, that any new and untried aircraft might develop such unsatisfactory characteristics in scheduled operations that operations might have to be seriously curtailed, or suspended altogether for a large portion of the three-year period, the purpose of which is not to prove

the operating characteristics of a new plane, unless such were essential to the operation of the proposed routes.

However, State anticipates that if it is certificated, it will be able to accomplish far more in the development of an ideal plane than it can accomplish merely as a new applicant, whose views may be taken no more seriously than those of hundreds of other new applicants. As a certificated carrier, it will be in a position to place bona fide orders for aircraft and through actual operation cooperate with the CAA towards any revisions of the CAR which would permit more economical and efficient service. Also, by avoiding premature commitments, State will avoid purchasing any new aircraft that, lacking a universal appeal, might quickly become obsolete.

While State does not parallel fast existing rail routes, it would have to compete with streamlined coach trains. At the same time, there will be improvements in buses and automobiles, some of which have already been advertised, which will necessitate operation of comfortable, economical, low seat-mile cost aircraft, represented at present in the DC3.

[R. 9408]

Interchange

State is willing to interchange with other carriers as such interchange may be in the public interest. For cargo operations, because of high loading and unloading costs, and where passenger traffic over State's routes may increase to the point that non-stop operations with much larger aircraft may be justified, interchange may be practical. While State's smaller aircraft would serve the bulk of the needs, so that ownership of DC4's, 6's, or similar aircraft would be impractical, yet interchange with a carrier owning such aircraft would provide the lesser need at one or two route points. Such interchange would permit State's ships in turn to service local needs which another carrier beyond State's terminals might be less able to handle. It may be assumed that the

need for economical operation in competition with ground services will cause the airlines to cooperate more closely than in the past. The railroads have already announced their intention to continue through services as instituted during the war on troop movements. The airlines realize the need for interchange, as evidenced by eight existing carriers having publicly gone on record that they are willing or intend to utilize it.

Mention was made above that cargo is adaptable to interchange. State believes that the opportunities for cargo movement are excellent over its proposed routes, particularly for tobacco and textile products, such as cigarettes and hosiery, which have a high value in relation to their bulk and weight and which now move extensively by truck.

For interchange, State's Charlotte headquarters would be an advantage by giving centrally located airline equipment servicing facilities in the Piedmont.

Duplication and Diversion

Exhibits STA-76, STA-77, and STA-78 show that notwithstanding the importance of State's proposed routes, there is a minimum duplication and diversion. The maximum duplication occurs between Columbia and Jacksonville, where State parallels Eastern for 250 miles (page 1, STA-77); but on this route a minimum of local traffic was obtained (page 2, STA-76).

The most important State routes included as a whole in this proceeding are numbers 2, 3, 4, 5, 7, and 8. The principal diversion that these would cause would be on Delta's Route 54. Exhibit STA-78 shows that if the traffic Delta listed were all that 54 had carried and a 50% diversion occurred by this route combination, Delta's traffic would have still increased 26% for 1944 over 1943. This is a liberal estimate, since the traffic Delta showed may have been only a fraction of total Route 54 traffic.

There are two important considerations to offset the diversion that might occur. First is the fact that passengers, because of habit, schedules, or stop-overs, would continue to use Route 54. Second is the fact that the added convenience of State's service (principal diversion of Route 54 due to Route 8) would augment air traffic to such an extent that new traffic would be created for Route 54 that did not previously exist. It should be noted that even though State would offer a more direct service, this would not necessarily be an obstacle to Delta in view of their ability, according to an Eastern accusation, in securing 46% of Atlanta-Chicago traffic over Route 54.

Traffic Estimate

In terms of route miles proposed by State, its traffic estimate is extremely conservative, namely, approximately 2% of the United States traffic for 8% of an approximate 55,000 certificate route miles. The estimate is also conservative in view of the total being based on a lesser United States volume for 1946 than estimated by the Board.

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While State believes its traffic estimate to be reasonably accurate, there are other bases for gauging traffic which bear out State's estimates. For example the effect of numerous intermediate points increases traffic as per Mr. Stanton's statement in the Feeder Investigation that on a 600-mile route, stops 100 miles apart would increase the traffic more than the cost of adding the additional points.

The effect of adding small towns is twofold. First, the number of trips per 1,000 population is greater for towns under 10,000 population than those over. (17.64 to 10.98) Second, small cities produce a greater proportionate amount of long-distance travel than large cities, cities under 10,000 population producing one passenger for over 250-mile trips against only 3.7 passengers for over 250-mile trips produced by cities of a population of from 50,000 to 100,000.

It should be noted that State's conservative traffic estimate is based upon several factors, one of which is that the average passenger will travel 175 miles over State's routes, which is less than that for any certificated domestic carrier. Others are population, economic characteristics, completeness of service, and annual growth. Altogether the result is in accord with a normal expectation of the relative value of the routes, with the single exception that the tremendous savings in mileage and time may increase the totals considerably.

Importance of Area

The importance of the Piedmont is reflected in State's exhibits STA-3, STA-6, STA-9, STA-10, and STA-11, showing the rapid growth of the cities and States notwithstanding their virtual isolation from cities across the mountains and from coastal cities except for highway transportation. The Piedmont, which comprises an area approximately 300 miles long by 200 miles wide, contains a population of over three and one-half million people within 25 miles of the points State proposes to serve.

The area is particularly noted for manufacture of textile and tobacco products. It also includes insurance companies headquarters, large distribution centers for the smaller communities, chemical concerns, and furniture manufacture. It is located in the mid-south, so that with the advent of equal transportation facilities in other than just north-south directions, its climate will encourage development of other new industries. This is the area State primarily seeks to serve.

Cities

The 55 stops proposed by State include many important cities well-known to the Board. They also include 21 noncertificated stops which are important, yet, unlike many of the others, are not included in the 1933 Rail Report. The average 1940 population of these points was 13,900, and,

within a 25-mile radius, 108,800 (STA-17). However, their omission from the Rail Report should not be considered consequential because of the evident use in the report of only the most important points in each State, as reflected by the fact that small communities, such as Reno, Nevada (21,300 population), were included.

If the 21 non-certificated stops (none less than 30 miles from a certificated stop) are compared with Wilmington, N. C., which in 1933 had a total of 81,103 in-and-out 1933 rail passengers for a population of 33,400, it would indicate that these 21 points, averaging almost one-half Wilmington's population, would have had approximately 40,000 1933 rail passengers.

The eight of these 21 points which are located in the Piedmont, or Region 2 (STA-69), had an average 1940 population of 18,100, and of 97,800 within 25 miles. On a similar comparative basis with Wilmington, N. C., these points would have had approximately 44,000 1933 rail passengers.

One factor to be considered in the certification of new and smaller communities is the usual interest of a city only in points larger than itself. This tendency does not discount the need of smaller points for scheduled air service. The fact is that most large cities show their need for air service by including population and economic characteristics of smaller points within as wide an area as possible, yet ignore the air-

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service needs of these communities. This is for the reason that as a rule those persons in the larger cities urging air service are generally interested in traveling only to larger centers. However, residents as a whole do travel to the smaller points, as shown by hotel registrations and State's own records. Likewise, needs of residents of the smaller cities to travel to other points than a large nearby city are also reflected in their long-distance telephone calls.

It should be noted that air service for smaller points and development of equipment to serve these points become in-

creasingly necessary as the existing companies continue to advocate centrally located airports ostensibly serving cities 50 miles away, and purchase the larger equipment that they advertise (United Air Lines advertisements) and have ordered, such as DC4's and 6's, and recently by Northwest, 77-passenger C97 Boeing Stratocruisers.

Purchase of such aircraft will decrease frequency and impose heavy financial loads of those companies which, in turn, may force them to advocate further centralization on airports. The traffic, then, that a company such as State, dedicated to maximum frequency with economical planes of much smaller capacity, can develop from the smaller points may be invaluable to the existing carriers. The longer the surface trip that is required to reach an airport, the greater incentive there is to surface carriers to improve their service to eliminate any need for air travel. To secure the maximum in air-travel development, greater convenience must be offered in placing air-travel facilities at the doorstep of all.

In this proceeding, State's stops average 69.5 miles apart. These are not as close as State would eventually expect to develop service and are further apart than on some existing routes, such as Northeast's Route No. 27, but takes into account the need with present equipment and methods, stopping at all points, to surpass ground transportation.

In connection with the cities, it is important to note that hotel registrations and similar data are included for most cities on State's proposed routes (STA-81). Subsequently to the preparation of this exhibit, additional information has been made available by the cities. However, these data are still unavailable for some of the important points, such as Bluefield, W. Va. In such cases, it is apparent that the data available in this exhibit and in the city exhibits of other cities establish the strong interest among the points along the proposed routes, which in this instance are Cincinnati and Louisville to Norfolk. Exhibits STA-3 through STA-18 give

the economic characteristics of all cities and comparisons on existing and proposed transportation facilities.

The population figures given in Exhibit STA-3, page 4, show that the 55 stops include within a 25-mile radius over 9 million people, or 7% of the United States population. In the Great-Lakes-to-Florida proceeding, State's proposed routes, with certain populous northern cities added, would serve fourteen million people, or 10.7% of the United States population.

No mention of cities is complete without reference to Charlotte, State's proposed headquarters, Louisville, terminal point for four of State's proposed routes, and Cincinnati, the largest city on these routes. Charlotte is the largest city in North Carolina and, as shown on page 23 of the Charlotte exhibit, is one of the five cities in the thirteen Southern States having a population of one million or more within its trading area. The others are Baltimore, Memphis, Dallas, and Atlanta.

The importance of Louisville and Cincinnati and of connecting them with Charlotte and cities in the Piedmont and coastal area are borne out by the fact that State's proposed routes would make them closer by air to Charlotte, for example, than any other city producing an equal volume of manufactured goods, namely, 370 and 343 air miles, whereas they are both now further than the nearest city of equal manufacturing production. They are now 602 and 611 air miles from Charlotte compared to Baltimore, 371 air miles from Charlotte.

[R. 9411]

Routes

The routes which State has proposed run predominantly in directions at right angles to the mountains and existing air routes (maps STA-68 and STA-71). As such, they serve a different purpose than those of present carriers, both because of direction and ability to serve local needs (due to

inadequate surface transportation along their paths), and for maximum development could best be operated by a new carrier.

The routes show a number of desirable characteristics. They are direct without doglegs. They offer a minimum amount of duplication of existing service except where duplication is needed to supply additional local schedules. They are long enough to promote on-off traffic. They do not follow to any appreciable extent fast surface routes. They form an integrated group and have balanced seasonal characteristics. They eliminate the necessity for split service with its unfortunate dilution of local schedules.

These routes supply a self-evident need which must be met sooner or later. Under conditions existing today, there is no obstacle which should prevent their authorization. The great time savings and thorough coverage to be given are certain to affect the postwar growth and location of industries in the regions involved. In most cases, the routes supply the largest unserved needs of the cities named. State's surveys have shown, in fact, that this is one of the few areas in the country where a logical new system should be inaugurated and where it is not necessary to resort to a substandard service.

State's proposed routes, as specifically included in this proceeding, are individually strong, except as weakened by the Portsmouth and Morgantown cut-offs for Routes 6 and 1, but gain added strength through integration with each other. With twelve routes named, an almost unlimited number of combinations of less than twelve is possible. In exhibit STA-33, a summary of estimated revenues and expenses is given for six logical combinations, with varying degrees of integration, of two to six routes.

An obvious comparison of several of State's routes is with PCA's Route 51. However, a check of hotel registrations and similar data for the two most similar routes, namely, Nos. 3 and 7 (between Wilmington and Louisville), shows that these

routes supply more important travel needs than Route No. 51, in the case of Route No. 3 by providing an essential and direct east-west service through Charlotte, the largest city in the state, and for Charlotte to Louisville and northwestern points with which there is a greater community of interest than with the southwest. But although these State routes are superior in several respects to Route 51, the strength of Route 51 has not been demonstrable during its short period of operation, when it suffered under inferior equipment, lack of navigation aids, and, for a large part of the time, under a single schedule.

In one of the six combinations of routes (No. 6) State also included routes Nos. 2, 5, 8, and 4. These are routes from Norfolk to Cincinnati and Louisville, from Cincinnati to Charleston, S. C., and from Roanoke to Wilmington. All show considerable strength in providing direct service between important points and in serving new communities. They enable large time savings, have a minimum duplication, and connect points with great community of interest. The non-stop distance from Charlotte to Cincinnati is only 8 miles less than that shown over No. 8, including three stops.

Other routes named by State are Nos. 1 and 6, previously mentioned, which originally were asked for from Pittsburgh and Detroit to Jacksonville. As such, these are of great importance, which is lessened by their being cut short of the northern terminals, but nonetheless needed.

Routes No. 9, 10, 11, and 12 serve important local needs between New Bern and Chattanooga, Louisville and Jacksonville, Norfolk and Montgomery, and Savannah and Montgomery. The only one of these which could be expected to develop terminal-to-terminal traffic to any degree would be

[R. 9412]

No. 12, Savannah to Montgomery. All are essential in providing more complete air transportation in the Southeast but are not as essential as those previously enumerated.

It should be noted that in addition to the routes named, variations of such routes which would be a benefit, although

not as great a benefit, are feasible. For example, Route No. 7 between Louisville and Wilmington could be given the co-terminals of New Bern and Wilmington. It may also be noted that State's applications in this proceeding include Wilmington-Montgomery, Jacksonville-Detroit via Roanoke, but cut off at Portsmouth, Ohio, New Bern to Montgomery, and Columbus to Meridian, which are not portrayed in the exhibits except as included in the twelve routes specifically named.

Difference Between State and Other Applicants

Before concluding, we should note a few of the differences between State and other existing and new applicants for services within the three regions. First of all, State had a different beginning. Its proposed routes are based on a survey of national needs and then its applications made following institution of non-scheduled service inaugurated for the purpose of verifying earlier surveys. Except possibly for the transcontinental carriers, no other applicants are known to have based their applications on national needs. Nor are any new applicants known to have based their applications on prior non-scheduled or scheduled operations, although the latter have been instituted intrastate subsequently to the filing of applications. State's pioneering and actual operations are enumerated in Exhibits STA-22, STA-60 through STA-63.

State's plans include a headquarters in the Piedmont which will enable close contact with many principal customers (passengers, shippers, and cities) and with its proposed operations. State stresses a low-cost per seat-mile operation and frequent schedules to promote short-haul traffic, with sufficient quality to attract passengers. State's routes are such as to depend for their success neither on small communities nor on high-speed terminal-to-terminal traffic. The distance between stops is not calculated according to preconceived formulae of specific mileages, but to make air travel more economic than ground transportation, stopping at all points and rendering a complete service to those points

with schedules to suit the needs of intermediate-point as well as terminal-point traffic along the routes.

An apt illustration of the feasibility of State's local service, stopping at all points, is its proposed Route 2 between Cincinnati and Norfolk compared with American's Cincinnati-Chicago service. The fastest rail time from Cincinnati to Norfolk is 18:45 for 671.1 miles. State's air time is 5:12 with stops averaging 54.1 miles apart. Thus the air time is 27% of the best rail time. However, the fastest rail time from Cincinnati to Chicago is 5:30 for 302.5 miles. American's air time is 2:05 with stops averaging 134.5 miles apart, or 37% of the best rail time, thus making State's multi-stop service more economic than American's single-stop service. And, be it noted, State's Cincinnati-Norfolk route is the only State route that parallels a trunk-line railroad service.

Other differences are that State proposes a high degree of integration, complete and not fractional treatment of the areas to be served, and little duplication, either actual or theoretical.

Exhibits

Attention is also directed to State's exhibits as a whole, which include several of more than ordinary interest. One is complete savings on time, fare, and mileage, not only along the specific routes, but also between the different routes and regions involved. Also included are the effect of adding schedules, the effect of a new route on increasing traffic, an authentic traffic estimate, complete diversion and duplication exhibits, an integration exhibit, and a complete set of cost exhibits on various route combinations and types of equipment, including one on the relative merits of new equipment under development.

[R. 9413]

Added to these are State's history in planning these operations, its pioneering, and maps showing topography, through rail service, and the present air-service pattern in the area.

Pickup

Not included in State's proposals is any pickup service. This is for the reason that State believes that passenger service which will carry mail and property at a fraction of the cost by pickup is the most desirable and needed and, therefore, that stops for passenger service should be determined first. State also believes that there is a possibility that messenger service from passenger stops may reduce the benefits of pickup service but has not yet fully analyzed this possibility. If such is not the case, State is willing to render a pickup service if the Board feels that the same operator should supply both needs. However, State feels that operation of the type service it has proposed in this proceeding warrants the full energies of a single company. State is dubious of the safety and practicality of a combination service with present aircraft, but is willing to operate such a combination on an experimental basis if the Board so desires. State is keenly following the development of new aircraft, such as helicopters, which may make this and other air transportation services feasible.

Conclusion

State believes that its proposals are in the greatest public interest and that at one stroke the Board here has the opportunity and justification to use its authority to create an integrated system of routes, of greater or lesser extent, that will furnish an unparalleled degree of air service, not dependent upon further authorizations. The issue in this case is the clear-cut one of establishing new transportation channels between important regions which are now virtually isolated from one another, of bringing air service to many communities now without any air service, and of providing air service between many points in each region which are now connected only by inadequate surface facilities—all integrated through the authorization of a carrier for this specific task.

Exhibit STA-P [R. 9414]

STATE AIRLINES, INC.

Statement of

E. H. Pickering, Operations Witness

The principal considerations reflected in State's operating plans are safety, economy, practicality, and progress. These are embodied in the following categories.

Aircraft

The DC-3 is an airplane which combines suitability, availability, and reliability. It is the smallest plane that will accommodate estimated loads for the frequencies proposed and it has a wide passenger acceptance. It is becoming available from the Army as surplus, and it has recently been announced that Douglas is resuming manufacture of a model suitable for passenger use. It is reliable in that its performance characteristics have been proven, spare parts are obtainable, and personnel familiar with its maintenance and operation are available. It is also economical in that it is the smallest modern certificated airline transport that will break even at a reasonable load factor on passenger fares alone. It represents a lower investment per seat than any smaller multi-engined all-metal aircraft.

A smaller and less efficient aircraft for the purpose is the Lockheed Lodestar. Lockheed Electras, 12-As, and Boeing 247Ds are less attractive possibilities. It is noticeable that the operating cost of the Lodestar is only slightly less than the DC-3; while it has 10 fewer seats. As mentioned in Exhibit STA-57, State is considering newer aircraft developments which are still in the formulative stage.

Passenger Service

The use of stewards is planned in order to expedite ground service. It is anticipated that a steward may be able to

decrease the number of personnel necessary at stations, or reduce ground time, so that he will be able to offset his expense.

Use of stewards is also a safety measure. The CAR require that in a transport plane the pilots lock themselves off from the passengers so as to be undisturbed. It is possible that had a steward been aboard during a recent accident to a non-scheduled Lodestar at the Washington National Airport, the lives of seven passengers might have been saved. Unfamiliarity with emergency exits caused the passengers to trap themselves until released by the pilots who had to fight their way to the length of the ship.

Use of a 24-passenger DC-3 will permit some additional baggage to be placed in the aft compartment, where it can readily be serviced by the steward. It may prove practical for passengers to carry luggage to the plane where the steward can check it.

Pilots may assist in ground operations during stops, but to do so will probably add to a plane's time on the ground, which is not attractive to short-haul passengers.

It is State's intention to work with manufacturers as closely as possible in securing new equipment incorporating many improvements. New planes may eliminate the need for stewards just as newer streetcars eliminated conductors.

Costs are shown both with and without food service. The need for food service depends upon the length of the routes certificated. The need for providing free food depends somewhat upon policies of other lines and upon fares charged. There is the possibility of charging for food, by advertising it as a quality product. State also wishes to encourage establishment of quality airport restaurants so that increased frequency can permit passenger gains in short-haul business for whom no food would be necessary. However, although food service may be eliminated, its cost is included as a conservative measure.

[R. 9415]

Ground Operations

In his address at Detroit in 1943, Board Member Edward Warner compared bus and air operation costs, commenting on the ground expense item of 13.19¢ as being large and perhaps capable of reduction. It is State's opinion that this cost may be reduced by such means as use of stewards, or other crew personnel to load and unload aircraft, improved types of aircraft, and joint use of facilities and personnel with other airlines. Joint use of radio facilities as now being tried at Boston could reduce costs. State plans to participate as fully as possible in any such activities where personnel and equipment are known to be qualified and dependable, and where the operations are not competitive.

State is as anxious to cut costs as anyone, but if it is awarded a three year temporary certificate, it expects to produce the traffic it has estimated, and believes that doing so will be a full time job for every employee. Moreover, it is apparent that if it is successful in producing this traffic, the cost to the government will be far less and the benefit to the public far more, than if it resorted to false economies. Even for bus lines the era of restaurant, barber shop, and drug store ticket offices is rapidly vanishing.

Conventional radio communications to meet CAR regulations for ground to plane is proposed at each stop. Lack of these facilities would cut down operating speed at many points where tower facilities are not provided, by necessitating circling the field before landing. Two way communications are essential in warning aircraft of any important change in field conditions if faster approach procedures are to be used.

Before inauguration of service thorough consideration will be given to the use of ultra high radio equipment.

However, although State will seek any improvements in radio and communications service, its costs include proven

methods and equipment for the purpose. Two minutes saved at each landing by proper radio facilities would soon pay the cost of same.

State has included the expense of a reservations system as being necessary to assure passengers of space on connecting flights of its own and other carriers, and also for its own direct local service. This expense has been included in Exhibit STA-48 for land wire services. However, the prospect is that DC3's may provide enough capacity so that reasonable assurance of seats may be given to passengers for space over State routes, and likewise the much larger aircraft existing carriers will operate, to do the same over connecting routes so that reservations and its expense may be reduced.

However, as long as passengers can't stand on planes and there is a possibility of lack of space, reservations are particularly necessary for short haul travel. At points such as Charleston, S. C., Charlotte, Greensboro, and Asheville, N. C., where the airports are six to twelve miles from the center of town, passengers would be greatly inconvenienced if after arrival at the airport they could not get aboard. A turndown after such a journey would eliminate a large part of the advantage of air service for short haul traffic. To the same extent, feeder services would be unsatisfactory if after arrival at a connecting terminal, space was not available on a connecting flight of another carrier. The same dependability for space is required on commuter flights from an outlying region to a large center.

The passenger regards reservations for transportation as a convenience where the price of obtaining same is only a local 5¢ phone call. Furthermore, the public is educated to reservations in many aspects of daily life and expects this

[R. 9416]

service where the cost is above that of other forms of transportation. Railroads now regularly provide reservation service on streamline coach trains at no increase in fare and doubtless will continue to do so. Pullman reservations

are based both on convenience to the passenger and expense to the Pullman Company, the reservations expense being less than the operating expense of empty cars. This is a common interest with the airlines.

It is obvious that the fewer seats provided, the tighter the reservations control must be. Thus, while State anticipates that additional space and communications improvements will reduce the need and lessen the cost of reservations and that experiments in traffic sales at reduced fares without reservations will be made, the only sound approach for a new company to start scheduled operations is to utilize reservations and avoid disappointing its first customers.

Frequently, the business of those who travel by air is of such consequence that they require assurance of space or plan to travel otherwise. This is not the case with many bus passengers to whom delays and missed connections are accepted as the price of cheap transportation.

Exhibit STA-1 [R. 9417]

NAMES AND QUALIFICATIONS OF WITNESSES AS FAR AS NOW KNOWN.

H. K. Gilbert, Jr.

Mr. Gilbert's first Transportation experience was in 1928 as an agent for the Atlantic-Pacific Stages, Inc., the management of which later took over Teche Greyhound. From 1929 until 1939 he was connected in various capacities with heavy duty automotive equipment manufacturers, the last of which as sales-manager of the Differential Wheel Corp. In May, 1939 he left Differential to engage in surveys on the needs of additional air transportation resulting in the founding of State Airlines, Inc. in December, 1939. Since that date he has been president and a director of this company.

C. K. Brown, M.A., Ph.D.

Dr. Brown was born in Salisbury, N. C. and received the following education: A.B. 1921, Davidson College, M.A. 1923, Ph. D. 1927, University of North Carolina. Area of major study for doctorate, The Development of Transportation in the Southeast.

He has had the following experience: Research Assistant, 1925-26, and Research Associate, 1929-30, in Institute for Research in Social Science, University of North Carolina. Associate Professor, 1926-29, and Professor of Economics since 1929, Davidson College. Dean of the Faculty, Davidson College, since 1941. Visiting instructor, University of North Carolina, summers of 1928, 1929, 1937.

Dr. Brown is the author of these books: "A State Movement in Railroad Development", The Story of North Carolina's First Effort to Establish an East and West Truck Railroad Line, University of North Carolina Press, Chapel Hill, 1928. "The State Highway System of North Carolina, Its Evolution and Present Status", Chapel Hill, University of North Carolina Press, 1931. "Introduction to Economics", New York, American Book Company, 1941.

Exhibit STA 2 [R. 9418]

PROPOSED ROUTES
INCLUDED IN THIS SET OF EXHIBITS

Route 1

Pittsburgh, Pa.*
Morgantown, W. Va.
Clarksburg, W. Va.
Elkins, W. Va.
Covington-Clifton Forge, Va.
Roanoke, Va.
Greensboro, N. C.
Winston-Salem, N. C.
Salisbury, N. C.
Charlotte, N. C.
Rock Hill, S. C.
Columbia, S. C.
Savannah, Ga.
Brunswick, Ga.
Jacksonville, Fla.

Route 2

Cincinnati, O.
Portsmouth, O.
Huntington, W. Va.
Charleston, W. Va.
Beckley, W. Va.
Princeton-Bluefield, W. Va.
Roanoke, Va.
Lynchburg, Va.
Petersburg, Va.
Richmond, Va.
Norfolk, Va.

Route 3

Louisville, Ky.
Knoxville, Tenn.
Asheville, N. C.
Charlotte, N. C.
Pinehurst-Southern Pines, N. C.
Fayetteville, N. C.
Wilmington, N. C.

Route 4

Roanoke, Va.
Danville, Va.
Durham-Raleigh, N. C.
Fayetteville, N. C.
Wilmington, N. C.

Route 5

Norfolk, Va.
Richmond, Va.
Petersburg, Va.
Lynchburg, Va.
Roanoke, Va.
Princeton-Bluefield, W. Va.
Lexington, Ky.
Louisville, Ky.

Route 6

Detroit, Mich.*
Toledo, O.*
Findlay, O.*
Marion, O.*
Columbus, O.*
Chillicothe, O.*
Portsmouth, O.
Huntington, W. Va.
Bristol, Va.
Asheville, N. C.
Greenville, S. C.
Anderson, S. C.
Greenwood, S. C.
Augusta, Ga.
Waycross, Ga.
Jacksonville, Fla.

Route 7

Louisville, Ky.
Lexington, Ky.

Bristol, Va.
Winston-Salem, N. C.
Greensboro, N. C.
Burlington, N. C.
Durham-Raleigh, N. C.
Fayetteville, N. C.
Wilmington, N. C.

Route 8

Cincinnati, O.
Lexington, Ky.
Bristol, Va.
Hickory, N. C.
Charlotte, N. C.
Columbia, S. C.
Charleston, S. C.

Route 9

New Bern, N. C.
Goldsboro, N. C.
Durham-Raleigh, N. C.
Charlotte, N. C.
Rock Hill, S. C.
Spartanburg, S. C.
Greenville, S. C.
Chattanooga, Tenn.

Route 10

Louisville, Ky.
Knoxville, Tenn.
Asheville, N. C.
Greenville, S. C.
Spartansburg, S. C.
Columbia, S. C.
Orangeburg, S. C.
Savannah, Ga.
Brunswick, Ga.
Jacksonville, Fla.

Route 11

Norfolk, Va.
Elizabeth City, N. C.
Greenville, N. C.
Goldsboro, N. C.
Fayetteville, N. C.
Florence, S. C.
Sumter, S. C.
Columbia, S. C.
Augusta, Ga.
Macon, Ga.
Columbus, Ga.
Montgomery, Ala.

Route 12

Savannah, Ga.
Dublin, Ga.
Macon, Ga.
Columbus, Ga.
Montgomery, Ala.

Route Included In This Proceeding But Not In Exhibits

Portsmouth, O.
Huntington, W. Va.
Charleston, W. Va.
Beckley, W. Va.
Princeton-Bluefield, W. Va.
Roanoke, Va.
Greensboro, N. C.
Winston-Salem, N. C.
Salisbury, N. C.
Charlotte, N. C.
Rock Hill, S. C.
Columbia, S. C.
Savannah, Ga.
Brunswick, Ga.
Jacksonville, Fla.

* Applied for but not in this proceeding.

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Exhibit Sta - 2
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ALPHABETICAL LIST OF CITIES AND STATES ON PROPOSED ROUTES

No.	Not certificated	No. of Stops Per Co-Terminal	Region	City	No.	Not certificated	No. of Stops Per Co-Terminal	Region	City
1	1	1	2	Anderson, S. C.	32		30	1	Huntington, W. Va.
2	x	2	2	Asheville, N. C.	33		31	3	Jacksonville, Fla.
3		3	2	Augusta, Ga.	34		*	1	Johnson City, Tenn-Bristol
4	2	4	1	Beckley, W. Va.					
5	3	5	1	Bluefield, W.Va.	35		*	1	Kingsport, Tenn.-Bristol
6		6	1	Bristol, Va.					
7	x	7	3	Brunswick, Ga.	36		32	1	Knoxville, Tenn.
8	4	8	2	Burlington, N.C.	37	x	33	1	Lexington, Ky.
9		9	3	Charleston, S.C.	38		34	1	Louisville, Ky.
10	x	10	1	Charleston, W.Va.	39		35	2	Lynchburg, Va.
11		11	2	Charlotte, N. C.	40		36	2	Macon, Ga.
12		12	1	Chattanooga, Tenn.	41		37	2	Montgomery, Ala.
13		13	1	Cincinnati, O.	42		38	1	Morgantown, W.Va.
14		14	1	Clarksburg, W.Va.	43	14	39	3	New Bern, N. C.
15	5	*	1	Clifton Forge, Va. Covington	44		40	3	Norfolk, Va.
					45	15	41	3	Orangeburg, S.C.
16		15	2	Columbia, S.C.	46	16	42	2	Petersburg, Va.
17		16	2	Columbus, Ga.	47	17	43	2	Pinehurst, N.C.
18	6	17	1	Covington, Va.	48	18	44	1	Portsmouth, O.
19	7	18	2	Danville, Va.	49	19	*	1	Princeton, W.Va. Bluefield
20	8	19	3	Dublin, Ga.					
21		*	2	Durham, N. C. Raleigh	50		45	2	Raleigh, N. C.
					51		46	2	Richmond, Va.
22	x	20	3	Elizabeth City, N.C.	52		47	2	Roanoke, Va.
23		21	1	Elkins, W. Va.	53	20	48	2	Rock Hill, S.C.
24	9	22	3	Fayetteville, N.C.	54	21	49	2	Salisbury, N. C.
25	10	23	3	Florence, S. C.	55		50	3	Savannah, Ga.
26		24	2	Greensboro, N.C.	56	22	*	2	Southern Pines, N.C. Pinehurst
27		25	3	Greenville, N.C.					
28	11	26	2	Greenville, S.C.	57		51	2	Spartanburg, S.C.
29	12	27	2	Greenwood, S.C.	58	23	52	3	Sumter, S.C.
30	13	28	3	Goldsboro, N.C.	59	24	53	3	Waycross, Ga.
31	x	29	2	Hickory, N. C.	60	x	54	3	Wilmington, N.C.
					61		55	2	Winston-Salem, N.C.

x - Not receiving service: American Aviation Traffic Guide March 1945

No.	Region	State
1	2	Alabama
2	3	Florida
3	2,3	Georgia
4	1	Kentucky
5	2,3	North Carolina
6	1	Ohio
7	2,3	South Carolina
8	1	Tennessee
9	1,2,3	Virginia
10	1	West Virginia

No.	Region
1	Terminal Points on the North and West and Intermediate Points West of the Appalachian Ridge
2	Piedmont Points and Contiguous Territory
3	Terminal Points on the Atlantic Seaboard and Points Contiguous Thereto

Of the 55 proposed stops, 21 are not certificated. These include 24 of the 61 cities named. Although 61 cities are named, there are a number of additional cities and communities which both the certificated and non-certificated named points do or would serve. Of the 37 certificated cities, 30 are now receiving air service.

[R. 9420]

List of States To Be Served

Showing Cities Therein With Route Numbers

	Route Numbers
ALABAMA	
Montgomery	11, 12
FLORIDA	
Jacksonville	1, 10, 6
GEORGIA	
Augusta	6, 9
Brunswick	1, 10
Columbus	11, 12
Dublin	12
Macon	11, 12
Savannah	1, 10, 12
Waycross	6
KENTUCKY	
Lexington	5, 7, 8
Louisville	3, 5, 7, 10
NORTH CAROLINA	
Asheville	3, 6, 10
Burlington	7
Charlotte	1, 3, 8, 9
Durham	4, 7, 9
Elizabeth City	11
Fayetteville	3, 4, 7, 11
Goldsboro	9, 11
Greensboro	1, 7
Greenville	11
Hickory	8
New Bern	9
Pinehurst	3
Raleigh	4, 7, 9
Salisbury	1
Southern Pines	3
Wilmington	3, 4, 7
Winston-Salem	1, 7
OHIO	
Cincinnati	2, 8
Portsmouth	2, 6

	Route Numbers
SOUTH CAROLINA	
Anderson	6
Charleston	8
Columbia	1, 8, 10, 11
Florence	11
Greenville	6, 9, 10
Greenwood	6
Orangeburg	10
Rock Hill	1, 9
Spartanburg	9, 10
Sumter	11
TENNESSEE	
Chattanooga	9
Johnson City	6, 7, 8
Kingsport	6, 7, 8
Knoxville	3, 10
VIRGINIA	
Bristol	6, 7, 8
Clifton Forge	1
Covington	1
Danville	4
Lynchburg	2, 5
Norfolk	2, 5
Petersburg	2, 5
Richmond	2, 5
Roanoke	1, 2, 5
WEST VIRGINIA	
Beckley	2
Bluefield	2, 5
Charleston	2
Clarksburg	1
Elkins	1
Huntington	2, 6
Morgantown	1
Princeton	2, 5

[R. 9421]

NARRATIVE FOR EXHIBITS STA-3, STA-4, AND STA-5

Exhibits STA-3 (3 pages), STA-4, and STA-5, which follow immediately, show the population features of the area which State proposes to serve. This area may be briefly identified as lying between a wide arc drawn from Morgantown, West Virginia, through Charleston, West Virginia, Cincinnati, and Louisville to Chattanooga and the line of the South Atlantic Seaboard from Norfolk to Jacksonville.

Largely because of the nature of the Appalachian mountain range, which lies athwart this region in a north-east and south-west direction, and of the peculiarities of its drainage, land routes of travel and traffic developed predominantly in directions parallel to the mountains. This situation has left the Piedmont area of the Southeast, lying next to the mountains, with highly inferior connections both with the area lying west of the mountain range and with the Seaboard cities to the East and Southeast. Since the proposed routes of State Airlines are largely designed to rectify this condition, the population figures and the figures for economic characteristics of the entire area to be served are presented by regional sub-divisions of the entire area as follows: (1) the region west of the main Appalachian region; (2) the Piedmont region; (3) the South Atlantic Seaboard region. Such a presentation is intended to throw into sharp relief the principal characteristics of three contiguous regions, which are to such a large extent isolated from one another owing to lack of adequate transportation facilities.

Exhibit STA-3 reveals that the 15 points in region (1) which State proposes to serve have a combined population of 3,585,300 within a radius of 25 miles of the points, while the 24 points in region (2) have a population of 3,645,200 within 25 miles, and the 16 Atlantic Seaboard points to be connected have a population of 1,888,900 within 25 miles.

In the total of these three figures, 9,119,400 people, constituting more than one-sixteenth of the entire population of the United States, are accounted for. This exhibit also reveals that while the cities of all three regions have enjoyed good rates of growth in the last 20 years, those of the Piedmont region have experienced the largest percentage of population growth.

Exhibit STA-4 tabulates the populations of cities by routes and shows percentages of change in the recent past.

From Exhibit STA-5 it will be observed that only 2 of the 55 cities proposed to be served have populations of less than 50,000 within a 25 mile radius, while all but 14 have a population of 100,000 or more within that radius.

Exhibit STA-3, pages 2, 3 and 4 (R. 9422-4) entitled *Populations of Cities to be Served Showing Comparative Growth By Region* sets forth the 1920, 1930, 1940 populations, the percentage increases from 1920 to 1930 and 1930 to 1940, the 1940 population within a 25 mile radius of each city and the total population of the following cities:

Morgantown, W. Va.	Greensboro, N. C.
Clarksburg, W. Va.	Winston-Salem, N. C.
Elkins, W. Va.	Salisbury, N. C.
Covington-Clifton Forge, Va.	Charlotte, N. C.
Portsmouth, O.	Rock Hill, S. C.
Huntington, W. Va.	Columbia, S. C.
Charleston, W. Va.	Lynchburg, Va.
Beckley, W. Va.	Petersburg, Va.
Princeton-Bluefield, W. Va.	Richmond, Va.
Cincinnati, O.	Danville, Va.
Lexington, Ky.	Burlington, N. C.
Tri-City, Tenn.*	Raleigh-Durham, N. C.
Louisville, Ky.	Pinehurst-Southern Pines, N. C.**
Knoxville, Tenn.	
Chattanooga, Tenn.	Hickory, N. C.
Roanoke, Va.	Asheville, N. C.

*Includes Bristol, Va., Johnson City, Tenn., Kingsport, Tenn.
**Data not available for Pinehurst.

Greenville, S. C.	New Bern, N. C.
Spartanburg, S. C.	Fayetteville, N. C.
Anderson, S. C.	Wilmington, N. C.
Greenwood, S. C.	Florence, S. C.
Augusta, Ga.	Sumter, S. C.
Macon, Ga.	Orangeburg, S. C.
Columbus, Ga.	Charleston, S. C.
Montgomery, Ala.	Savannah, Ga.
Norfolk, Va.	Brunswick, Ga.
Elizabeth City, N. C.	Jacksonville, Fla.
Greenville, N. C.	Waycross, Ga.
Goldsboro, N. C.	Dublin, Ga.

List of cities and information is shown under 3 sub-headings: "Proposed Terminal Points on the North and West and Intermediate Points West of the Appalachian Ridge", "Piedmont Points and Contiguous Territory", and "Terminal Points on Atlantic Seaboard and points contiguous thereto".

Exhibit STA-4 (R. 9425) entitled *Population of Cities To Be Served Showing Comparative Growth By Routes* sets forth the same population data as in Exhibit STA-3 for 12 routes listed in Exhibit STA-3, page 1.

Exhibit STA-5 (R. 9426) entitled *Classification of Cities To Be Served According To Population Within 25-Mile Radius* shows number of cities proposed to be served in various population classes, and number in each population class within the 3 sub-headings: "Terminal Points on North and West and Intermediate Points West of Mountain Ridge", "Piedmont Points and Continguous Territory", and "Terminal Points on Atlantic Seaboard and Points Contiguous".

Exhibit STA-6 (R. 9427-30) entitled *Economic Characteristics of Cities To Be Served By Region* lists same cities as shown in Exhibit STA-3 and under the 3 sub-headings used in Exhibit STA-3. This Exhibit shows for each city the (a) Retail Sales, 1935 in Volume and Per Capita Dollars; (b) Postal Receipts, 1939; (c) Persons Gainfully employed, 1930; (d) Residential Telephones County, 1935; (e) Passenger Automobiles Registered County, 1936; (f) Individual

Income Tax Returns, 1935, in total numbers and per 1,000 population.

Exhibit STA-7 (R. 9431) entitled *Selected Economic Characteristics Of Cities Grouped According To Routes* shows the same information as shown in Exhibit STA-6 for each of the 12 routes proposed by State, together with a tabulation showing the terminal cities of each route, the length of routes between terminals, number of intermediate points and average distance between stops as to each of such routes.

Exhibit STA-8 (R. 9432) entitled *National Economic Ranking of Cities on State's Proposed Routes That Had Air Service in 1939* is an analysis listing the following cities:

Elkins, W. Va.	Raleigh, N. C.
Huntington, W. Va.	Greenville, S. C.
Charleston, W. Va.	Spartanburg, S. C.
Cincinnati, O.	Augusta, Ga.
Bristol, Va.*	Macon, Ga.
Louisville, Ky.	Columbus, Ga.
Knoxville, Tenn.	Montgomery, Ala.
Chattanooga, Tenn.	Norfolk, Va.
Greensboro, N. C.	Charleston, S. C.
Charlotte, N. C.	Savannah, Ga.
Columbia, S. C.	Jacksonville, Fla.
Richmond, Va.	

*Includes Johnson City, Tenn. and Kingsport, Tenn.

For each city there is listed the Number of Persons, Retail Sales, Wholesale Sales, Value of Manufactured Products, Value Added by Manufacture, Residential Telephone, and Individual Income Tax Returns, 1935.

[R. 9433]

NARRATIVE FOR EXHIBITS STA-9 AND STA-10

Exhibits STA-9 and STA-10 present significant figures concerning the population and economic characteristics of the states which would be served by State Airlines. Atten-

tion is called especially to the high proportion of the population of the South Atlantic States from Virginia to Florida that is found within 25 miles of the points on State's proposed routes. For these five states as a whole the figure is 41.4 percent. In the cases of North and South Carolina it runs up to 66.2 percent and 64.4 percent, respectively, clearly indicating the completeness of the proposed service in that area.

Similarly, Exhibit STA-10 shows the considerable extent to which the economic activity of these states is concentrated in the cities on State's proposed lines.

Exhibit STA-9, page 2 (R. 9434) entitled *Population of States To Be Served Showing Comparative Growth by Region* lists the states of West Virginia, Ohio, Kentucky, Tennessee, Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama and lists for each state the population of each in 1920, 1930 and 1940; the percentage growth in the decades 1920-1930 and 1930-1940; the number of stops on proposed routes; percentage of 1940 state population in cities proposed to be served and within 25 miles of these points; and percentage of Continental U. S. of the total of the listed states.

Exhibit STA-10 (R. 9435) entitled *Economic Characteristics of States To Be Served by Region* lists the same states shown in Exhibit STA-9 and for each state, lists the Retail Sales, 1935, both volume and per capita; percentage at route points; value of manufactured products in 1935; individual income tax returns, 1935, both as to total number and per 1,000 population; motor vehicles registered in 1936 in total and for each 100 families. Percentage of these figures of the nation totals are also stated.

Exhibit STA-11 (R. 9436-7) entitled *Growth of Manufacturing in Areas To Be Served (South Atlantic and East North Central States) Compared With Middle Atlantic States.* Wages paid, value of products and value added by manufacturing is shown for each group for the years 1914, 1919, 1929 and 1939. Page 1 states that the Exhibit was designed to show shift of economic growth from Northeast to Middle West and South Atlantic States.

[R. 9438]

NARRATIVE FOR EXHIBIT STA-12

The large degree of isolation of the cities of the Piedmont from one another and from both cross-mountain and seaboard points is revealed by statistics of existing transportation facilities in the area. Since the principal rail channels of the area lie parallel to the mountains, the region is heavily dependent upon bus transportation for connections within the Piedmont and between the Piedmont and the Seaboard cities. This dependence is strikingly indicated by the large number of bus schedules as listed on pages 2, 4, and 5 of Exhibit STA-12. Because of the slowness of this transportation, the time savings that would result from the inauguration of State's routes are very large, especially when consideration is taken of the fact that distances within the Piedmont and between it and the Seaboard, while great enough to make air travel attractive, are not extremely long.

Existing surface transportation across the mountains is so circuitous and so slow as to make State's proposed times by air seem phenomenally low when compared with the best one can do by surface carrier. As shown on pages 2, 3, and 4 of Exhibit STA-12, the time savings in hours between Piedmont points and cross-mountain points, as compared to the best surface transportation, that would result from State's service runs into two figures in the bulk of the instances. Similar large time savings would result between cities lying outside the Piedmont area, as shown on pages 5 and 6 of the exhibit.

With respect to existing air transportation in the area under consideration, attention is called to the relatively large amount of time that is required for movement by air between most pairs of points. When the fastest time by existing air routes, as shown in the third column of this exhibit is compared with the air distance between points along State's

proposed routes, as shown in the first column, it will be evident that in most cases existing airlines do not connect the most important points in the area with a rapid or direct service, and afford only circuitous and time-consuming schedules involving numerous changes of plane and inevitable delays.

Exhibit STA-12, pages 2 to 6 (R. 9439-43) inclusive is entitled *Showing By Regions Time Savings of Proposed Service Over Existing Means of Transportation.* The Exhibit is arranged to show each proposed city listed in Exhibit STA-2, page 1, and all pairs of cities proposed to be served, being 194 combinations, and for each pair is tabulated the proposed air distance; the number of air schedules in 1941; the October 1943 rail schedules as to number and fastest time; the October 1943 bus schedules, both as to number of schedules and fastest time; State's proposed time; and the time saving in each case over fastest surface transportation. Footnotes as to type of connecting services are contained. The pairs of cities listed are subdivided as to "Within the Piedmont Area"; "Between the Piedmont and Outside Areas [Ohio River Cities, North Central Cities, Tennessee Valley Cities, South Atlantic Port Cities]"; and "Between Cities Outside the Piedmont Area", for which page 6 is reproduced.

SHOWING BY REGIONS TIME SAVINGS OF PROPOSED SERVICE OVER EXISTING MEANS OF TRANSPORTATION

Between Cities Outside the Piedmont Area

Between	State Air Miles	Existing Facilities: Dec. 1941-AIR No. of Fastest Sched.	Fastest Time	Oct. 1943-RAIL No. of Fastest Sched.	Fastest Time	Oct. 1943-BUS No. of Fastest Sched.	Fastest Time	State's Proposed Time	Saving Over Fastest Surface
Roanoke and									
Richmond	153	1b**	4:27	3	5:37	5	6:10	1:24	4:13
Norfolk	235	1b**	2:31	3	5:02	7	10:30	2:04	2:58
Wilmington	252	-	-	2	13:15	3	14:34	2:11	11:04
Charleston,SC	353	1b**	9:58	1	16:25	2	17:37	3:15	13:10
Savannah	399	1b***	9:35	1	18:25	1	18:00	3:46	14:14
Jacksonville	513	1b**	11:33	1	21:50	1	23:55	4:54	16:56
Macon	433	1b***	9:40	2	20:23	1	20:50	4:26	15:57
Elkins	108	*	-	-	-	2	11:10	:54	10:16
Clarksburg	143	1m**	2:51	-	-	2	17:25	1:18	16:07
Morgantown	173	1m**	3:12	-	-	2	19:25	1:39	17:46
Cincinnati	306	1b**	4:27	2	12:20	4	18:15	2:53	9:27
Richmond and									
Norfolk	82	2b	3:15	3	2:45	13	4:05	:35	2:10
Cincinnati	459	3b	4:21	3	14:19	3	23:20	4:32	9:47
Cincinnati and									
Wilmington	541	-	-	1	26:45	1	32:15	6:02	20:43
Charleston,SC	522	1b	6:21	1	24:20	4	31:55	4:27	19:53
Savannah	565	1a	5:25	1	29:30	10	28:05	4:54	23:11
Bristol	225	1c	2:38	3	10:47	3	15:00	1:37	9:10
Louisville and									
Knoxville	190	2n	3:00	3	8:50	4	11:42	1:13	7:37
Bristol	225	2n	3:27	2	14:30	2	16:20	1:37	12:53
Wilmington	564	-	-	1	36:45	3	33:25	4:39	28:46
Charleston,SC	522	1a	6:43	1	14:20	4	38:05	4:47	9:33
Jacksonville	678	1a	6:00	1	14:55	4	46:28	5:49	9:06
Savannah	564	1a	5:35	1	31:30	2	29:48	4:46	25:02
Knoxville and									
Wilmington	376	-	-	2	23:15	3	18:15	3:16	14:59
Charleston,SC	330	1a	9:23	1	14:35	3	17:35	3:24	11:11
Savannah	374	1a	3:45	1	17:00	2	15:05	3:28	11:37
Jacksonville	488	1a	4:55	1	21:05	4	22:45	4:31	16:34
Columbus, Ga.and									
Montgomery	81	1***	:35	1	3:20	9	3:00	:35	2:25
Macon	91	1a***	2:43	2	2:45	7	3:30	:38	2:07
Augusta	191	1a***	2:06	1	11:50	7	7:40	1:30	6:10
Columbia	261	1a***	2:50	1	11:45	6	11:05	2:06	8:59
Charleston,SC	354	1a***	3:38	1	14:20	3	13:55	5:13	8:42

* No connecting service
** Feb. 1944
*** March 1945

a - via Atlanta
b - via Washington
c - via Knoxville
m - via Tri-City
n - via Nashville

Sources: Official Guide of the Airways, Dec. 1941.
Universal Airline Schedules, Feb. 1944.
Russell's Official National Motor Coach Guide, Oct. 1943.
Official Guide of the Railways, Oct. 1943.
American Aviation Traffic Guide, March 1945.

[R. 9444]

NARRATIVE FOR EXHIBIT STA-13

Exhibit STA-13 reduces to a percentage basis and presents by routes the point-to-point time savings that would result from State's proposed service. Attention is called to the consistency with which State's routes would save four-fifths of the time now necessary to spend in moving by surface carrier from point to point along these routes.

For routes 1, 5, 6, 8, 10, and 12, among the cities for which there is any existing air service, the exhibit also shows the percentage saving of State's service as compared with the fastest existing air transport among principal points. These savings will be seen to range from 69% to 33%.

For routes 2, 3, 4, 7, 9, and 11, existing air service is so entirely lacking that no practical percentage of saving is obtainable.

Exhibit STA-13, pages 2 to 13 (R. 9445-56) inclusive, is entitled *Showing by Routes Time Savings of Proposed Service Over Existing Means of Transportation.* The Exhibit shows 12 routes and details as to each of the 142 segments of the 12 routes the following: (a) proposed air miles; (b) December 1941 air schedules, if any, as to number and fastest time; (c) October 1943 rail service, if any, both as to number of schedules and fastest time; (d) October 1943 bus service, both as to number of schedules and fastest time; (e) State's proposed time; (f) saving over fastest surface. A summary by routes is also set forth. In the case of each route the percentage time saving over the fastest surface time is set forth, and in 6 routes the time saving over the fastest air service. Pages number 4, 5, 6, 8 and 9 are reproduced herewith.

Exhibit STA 13
Page 4 of 13 pages

SHOWING BY ROUTES TIME SAVINGS OF PROPOSED SERVICE OVER EXISTING MEANS OF TRANSPORTATION

Route 2.

Point to Point	State Air Miles	Dec. 1941-AIR No. of Sched.	Dec. 1941-AIR Fastest Time	Oct. 1943-RAIL No. of Sched.	Oct. 1943-RAIL Fastest Time	Oct. 1943-BUS No. of Sched.	Oct. 1943-BUS Fastest Time	State's Proposed Time	Saving over Fastest Surface
Cincinnati-Portsmouth	80	-	-	3	2:55	13	3:35	:35	2:20
Portsmouth-Huntington	43	-	-	6	1:07	12	2:05	:22	:45
Huntington-Charleston	39	2	:21	8	1:00	12	2:00	:21	:39
Charleston-Beckley	51	-	-	1	6:10	5	2:50	:24	2:26
Beckley-Bluefield	31	-	-	via HI -	-	5	1:58	:17	1:41
Bluefield-Roanoke	62	-	-	4	2:55	4	4:00	:29	2:26
Roanoke-Lynchburg	43	-	-	6	1:15	6	1:55	:22	:53
Lynchburg-Petersburg	92	-	-	3	2:50	4	5:30	:39	2:11
Petersburg-Richmond	18	-	-	7	:40	27	:50	:13	:27
Richmond-Norfolk	82	2	3:15	3	2:45	13	4:05	:35	2:10
Total or Average	541	-	-	-	-	16.8	28:48	4:17	15:58

Percentage of State saving over fastest surface: 79

Principal Point to Point									
Cincinnati-Charleston	162	2	1:11	6	4:21	5	7:54	1:28	2:53
Charleston-Roanoke	144	*	-	1	8:45	4	9:05	1:20	7:25
Roanoke-Richmond	153	via WA 1	4:27	3	5:37	5	6:10	1:24	4:13
Richmond-Norfolk	82	2	3:15	3	2:45	13	4:05	:35	2:10
Total or Average	541	-	-	3.2	21:28	6.7	27:14	4:47	16:41

Percentage of State saving over fastest surface: 77

* No service to both points Dec. '41 or Feb. '44
HI - Huntington, W. Va.
WA - Washington

Exhibit SWA-13
Page 5 of 13 pages

SHOWING BY ROUTES TIME SAVINGS OF PROPOSED SERVICE OVER EXISTING MEANS OF TRANSPORTATION

Route 3.

Point to Point	State Air Miles	Dec. 1941-AIR No. of Sched.	Fastest Time	Oct. 1943-RAIL No. of Sched.	Fastest Time	Oct. 1943-BUS No. of Sched.	Fastest Time	State's Proposed Air Time	Saving over Fastest Surface
Louisville-Knoxville	190	via NA 2	3:00	3	8:50	4	11:42	1:13	7:37
Knoxville-Asheville	88	1	:40	2	3:50	9	3:45	:38	3:07
Asheville-Charlotte	90	•	-	2	5:10	18	4:25	:38	3:47
Charlotte-Southern Pines	87	-	-	2	4:30	4	3:44	:30	3:06
Southern Pines-Fayetteville	30	-	-	1	4:05	4	1:14	:17	:57
Fayetteville-Wilmington	81	-	-	1	2:30	8	3:00	:35	1:55
Total or Average	566	-	-	1.8	28:55	7.8	27:50	3:59	20:29

Percentage of State saving over fastest surface: 83

Principal Point to Point

Louisville-Knoxville	190	via NA 2	3:00	3	8:50	4	11:42	1:13	7:37
Knoxville-Charlotte	178	•	-	2	9:00	6	9:35	1:21	7:39
Charlotte-Wilmington	198	-	-	1	8:00	7	7:30	1:40	5:50
Total or Average	566	-	-	2	25:50	5.7	28:47	4:14	20:56

Percentage of State saving over fastest surface: 81

Route 4.

Point to Point	State Air Miles	Dec. 1941-AIR No. of Sched.	Fastest Time	Oct. 1943-RAIL No. of Sched.	Fastest Time	Oct. 1943-BUS No. of Sched.	Fastest Time	State's Proposed Air Time	Saving over Fastest Surface
Roanoke-Danville	65	-	-	4	4:27	5	2:45	:29	2:16
Danville-Raleigh	59	-	-	3	3:43	6	3:00	:28	2:32
Raleigh-Fayetteville	49	-	-	3	4:59	24	1:59	:24	1:35
Fayetteville-Wilmington	81	-	-	1	2:30	8	3:00	:35	1:55
Total or Average	252	-	-	2.7	15:39	10.7	10:44	1:56	8:19

Percentage of State saving over fastest surface: 81

Principal Point to Point

Roanoke-Raleigh	122	via WA 1••	8:21	3	10:45	4	6:35	1:02	5:33
Raleigh-Wilmington	130	-	-	1	8:45	6	4:49	1:04	3:45
Total or Average	252	-	-	2	16:30	5	11:24	2:06	9:15

Percentage of State saving over fastest surface: 81

• No service
•• February 1944
NA - Nashville
WA - Washington

R. 9449

Exhibit STA - 13
Page 6 of 13 Pages

SHOWING BY ROUTES TIME SAVINGS OF PROPOSED SERVICE OVER EXISTING MEANS OF TRANSPORTATION

Route 5

Point to Point	State Air Miles	Dec. 1941-AIR No. of Sched.	Fastest Time	Oct. 1943-RAIL No. of Sched.	Fastest Time	OCT. 1943-BUS No. of Sched.	Fastest Time	State's Proposed Time	Saving Over Fastest Surface
Norfolk via NA									
Richmond	82	2	3:15	3	2:45	13	4:05	:35	2:10
Richmond									
Petersburg	18	-	-	7	:40	27	:50	:13	:27
Petersburg									
Lynchburg	92	-	-	3	2:50	4	5:30	:39	2:11
Lynchburg									
Roanoke	43	*		6	1:15	6	1:55	:22	:53
Roanoke									
Bluefield	62	-	-	4	2:55	4	4:00	:29	2:26
Bluefield									
Lexington	190	-	-	1	13:20	3	14:49	1:13	12:07
Lexington									
Louisville	66	*		2	2:20	12	3:05	:30	1:50
Total or Average	553	-	-	3.7	26:05	9.9	34:14	4:01	22:04

Percentage of State Saving of fastest surface: 84

Principal Point to Point									
Norfolk via NA									
Richmond	82	2	3:15	3	2:45	13	4:05	:35	2:10
Richmond via NA									
Roanoke	153	1	4:27	3	5:37	5	6:10	1:24	4:13
Roanoke via NA									
Louisville	318	1	8:28	2	16:22	4	21:20	2:22	14:00
Total or Average	553	1.3	16:10	2.6	24:44	7.3	31:35	4:21	20:23

Percentage of state saving of fastest surface: 82
Percentage of state saving of fastest air: 73

* No service
NA Nashville
WA Washington

Exhibit [illegible]
Page 5 of 12 pages

SHOWING BY ROUTES TIME SAVINGS OF PROPOSED SERVICE OVER EXISTING MEANS OF TRANSPORTATION

Route 7.

Point to Point	State Air Miles	Dec. 1941-AIR No. of Sched.	Fastest Time	Oct. 1943-RAIL No. of Sched.	Fastest Time	Oct. 1943-BUS No. of Sched.	Fastest Time	State's Proposed Time	Saving over Fastest Surface
Louisville-Lexington	66	-	-	2	2:20	12	3:05	:30	1:50
Lexington-Johnson City	159	-	-	2	9:17	3	6:50	1:02	5:48
Johnson City-Winston-Salem	124	via KX 1**	3:25	1	11:00	7	6:25	:50	5:35
Winston-Salem-Greensboro	15	1**	:10	3	:40	13	1:05	:10	:30
Greensboro-Burlington	51	-	-	3	:37	21	:45	:17	:20
Burlington-Raleigh	39	-	-	3	2:00	22	2:00	:21	1:39
Raleigh-Fayetteville	49	-	-	3	4:59	24	1:59	:24	1:35
Fayetteville-Wilmington	81	-	-	1	2:30	8	3:00	:35	1:55
Total or Average	564	-	-	2.2	33:23	13.7	25:09	4:09	19:12

Percentage of State saving over fastest surface: 82

Principal Point to Point									
Louisville-Johnson City	225	via NA 2	3:27	2	14:30	2	16:20	1:37	12:53
Johnson City-Greensboro	139	via KX 1	3:25	1	8:15	7	7:50	1:15	6:35
Greensboro-Raleigh	70	1	:34	3	2:20	22	2:55	:43	1:37
Raleigh-Wilmington	130	-	-	1	5:45	6	4:49	1:04	3:45
Total or Average	564	-	-	1.7	30:50	9.2	31:54	4:39	24:50

Percentage of State saving over fastest surface: 84

** February 1944
KX - Knoxville
NA - Nashville

R. 9452

Exhibit STA -13
Page 9 of 13 Pages

SHOWING BY ROUTES TIME SAVINGS OF PROPOSED SERVICE OVER EXISTING MEANS OF TRANSPORTATION

Route 8.

Point to Point	State Air Miles	Dec. 1941-AIR No. of Sched.	Fastest Time	Oct. 1943-RAIL No. of Sched.	Fastest Time	Oct. 1943-BUS No. of Sched.	Fastest Time	State's Proposed Time	Saving Over Fastest Surface
Cincinnati-Lexington	66	-	-	2	1:50	14	2:15	:30	1:20
Lexington-Johnson City	139	-	-	2	9:17	3	6:50	1:02	5:48
Johnson City-Hickory	76	via KX 1	2:56	1	4:55	2	4:45	:33	4:12
Hickory-Charlotte	42	*	-	2	3:15	6	2:00	:22	1:38
Charlotte-Columbia	86	via AG 2	6:01	2	3:05	14	3:50	:40	2:25
Columbia-Charleston	93	2	:40	2	3:55	10	3:10	:40	2:30
Total or Average	522	-	-	1.8	26:17	8.1	22:50	3:47	17:53

Percentage of State saving of fastest surface: 82

Principal Point to Point									
Cincinnati-Johnson City	225	Via KX 1***	4:25	3	10:47	3	15:00	1:37	9:10
Johnson City-Charlotte	118	Via AG 1	4:55	1	7:30	2	7:10	1:00	6:10
Charlotte-Charleston	179	Via AG 1	4:15	1	9:45	8	7:33	1:25	6:08
Total or Average	522	1	13:35	1.6	28:02	4.3	29:43	4:02	21:28

Percentage of State saving of fastest surface: 84

Percentage of State saving of fastest air: 70

* No Service
AG - Atlanta
KX - Knoxville
***- March 1945

[R. 9457]

NARRATIVE FOR EXHIBITS STA-14 AND STA-15

Exhibit STA-14 compares the air routes that State would inaugurate with those already in existence in the area. The cities included in this exhibit are, of course, cities that already have air service in some direction. That a city is not adequately served, however, simply because it is a certificated stop on some airline, is clearly brought out by the number and extent of the savings in mileage and fare among these cities that would result from the inauguration of State's proposed service. In order to facilitate the making of comparisons, these figures have been presented in percentage as well as absolute form.

Attention should be directed to the overwhelming extent to which the establishment of State's proposed routes would result in saving from one-third to two-thirds of the mileage and fares for air transportation *among cities of this region that are already certificated airline stops.* Nothing could reveal more clearly the directness of State's proposed service as compared to the circuity and cost of travel by existing air channels between important pairs of cities in this area.

Exhibit STA-15 presents in form for ready reference *and by routes,* the absolute and percentage mileage savings over existing air routes that would result from State's lines.

Exhibit STA-14, pages 2 to 5 (R. 9458-61) inclusive, entitled *Showing By Regions Fare and Mileage of Proposed Service Over Existing Service,* sets forth 191 pairs of cities proposed to be served. The pairs of cities are listed under the sub-headings: "Within the Piedmont Area"; "Between the Piedmont and Outside Areas" [Ohio River Cities, North Central Cities, Tennessee Valley Cities and South Atlantic Port Cities]; and "Between Cities Outside the Piedmont Area". As to each pair of cities is set forth (a) the present air service, routing and mileage; (b) proposed air miles; (c) percent mileage savings; (d) present fare; (e) State's probable fare; and (f) percent fare saving.

SHOWING BY REGIONS FARE AND MILEAGE OF PROPOSED SERVICE OVER EXISTING SERVICE

Within the Piedmont Area

Between	Present Air Service Route	Present Air Service Miles	Proposed Air Miles	Percent Mileage Savings	Present Fare	State's Probable Fare	Percent Fare Saving
Charlotte and							
Raleigh	D	130	130	0	7.15	7.15	0
Greensboro	D	82	90	9-	4.50	4.95	10-
Winston-Salem	D	75	75	0	4.50	4.13	8
Hickory	GW	167	42	74	9.20	2.31	74
Asheville	GW	232	90	61	12.90	4.95	61
Columbia	AG	437	86	80	22.60	5.53	75
Augusta	AG	367	156	57	19.60	8.58	56
Macon	AG	312	256	17	16.85	14.08	16
Columbia and							
Greensboro	RA	257	179	30	15.80	9.84	31
Winston-Salem*	RA	257	164	36	15.80	9.02	41
Hickory	RA	342	128	62	20.60	7.04	65
Asheville	RA	407	149	63	24.35	8.20	66
Spartanburg	AG	375	83	77	19.10	4.57	72
Greenville	AG	353	107	69	18.00	5.89	67
Macon	AG	285	170	40	14.25	9.35	34
Montgomery	AG	517	342	33	17.85	18.81	5-
Asheville and							
Spartanburg	GW	294	66	77	16.30	3.63	77
Greenville	GW	316	42	86	17.50	2.31	86
Augusta	AG	377	161	57	20.45	8.86	56
Macon	AG	316	261	17	17.70	14.36	18
Augusta and							
Greensboro	RA	327	246	24	18.80	13.53	28
Winston-Salem*	RA	327	231	29	18.80	12.71	32
Hickory	RA	412	198	51	23.60	10.89	53
Greenville	AG	283	119	57	15.00	6.55	56
Between the Piedmont and Outside Areas							
I. Pittsburgh Area							
Pittsburgh and							
Raleigh-Durham	WA	470	344	26	26.50	18.92	28
Greensboro	WA	568	306	46	28.20	16.83	40
Winston-Salem	WA	552	321	41	28.20	17.66	37
Charlotte	WA	650	396	39	32.70	21.78	33
Hickory	KX	573	438	23	33.65	24.09	28
Asheville	KX	508	486	4	30.25	26.73	11
Spartanburg	WA	712	424	40	36.10	23.32	35
Greenville	WA	734	448	38	37.30	24.64	33
Columbia	WA	651	482	25	38.20	26.51	30
Augusta	KX	709	555	21	39.80	30.53	23
Macon	KX	648	655	1-	37.05	36.03	2
II. Ohio River Cities:							
Cincinnati and							
Asheville	KX	319	296	7	16.95	16.28	3
Hickory	KX	384	301	21	20.35	16.56	18
Winston-Salem	AG	709	349	50	36.60	19.20	47
Greensboro	KX	469	364	22	25.00	20.02	19
Raleigh	KX	545	428	21	29.10	23.54	19
Charlotte	AG	611	343	43	32.10	18.87	41
Spartanburg	AG	549	420	23	28.60	23.10	19
Greenville	AG	527	338	35	27.50	18.59	32
Columbia	AG	590	429	27	29.50	23.60	20
Augusta	AG	520	457	12	26.50	25.14	5

*Greensboro fare and mileage used, AG- Atlanta D-Direct GW- Greensboro
KX- Knoxville RA-Raleigh WA-Washington

SHOWING BY REGIONS FARE AND MILEAGE OF PROPOSED SERVICE OVER EXISTING SERVICE

Between the Piedmont and Outside Areas

Between	Present Air Service Route Miles		Proposed Air Miles	Percent Mileage Savings	Present Fare	State's Probable Fare	Percent Fare Saving
II. Ohio River Cities: (contd.)							
Louisville and							
Asheville	EI & KX	316	278	12	**		
Hickory	EI & KX	381	301	20	**		
Winston-Salem*	EI & KX	466	349	25	**		
Greensboro	EI & KX	466	364	21	**		
Raleigh	EI & KX	542	434	19	**		
Charlotte	AG	602	368	38	32.95	20.24	38
Spartanburg	AG	540	344	36	29.45	18.92	35
Greenville	AG	518	320	38	28.35	17.60	37
Columbia	AG	581	427	26	30.35	23.49	22
Augusta	AG	511	439	14	27.35	24.15	11
IV. North-Central Cities:							
Huntington and							
Asheville	KN & KX	364	206	43	26.65	11.33	57
Hickory	KN & KX	429	211	50	30.05	11.61	61
Winston-Salem*	KN & KX	514	259	49	34.70	14.25	58
Greensboro	KN & KX	514	267	48	34.70	14.69	57
Raleigh	KN & KX	590	305	48	38.80	16.78	56
Charlotte	AG	390	253	32	41.80	13.92	61
Spartanburg	AG	594	330	44	38.30	18.15	53
Greenville	AG	572	248	56	37.20	13.64	63
Columbia	AG	635	339	46	39.20	18.65	52
Augusta	AG	565	367	35	36.20	20.19	44
Charleston, W.Va. and							
Asheville	KX	325	208 g	36	24.25	15.61	35
Winston-Salem*	KX	475	243	48	32.30	13.37	58
Greensboro	KX	475	228	51	32.30	15.84	50
Raleigh	KX	551	266	51	36.40	14.63	59
Charlotte	AG	351	292	16	39.40	16.06	59
Spartanburg	AG	555	311	43	35.90	17.11	55
Greenville	AG	533	250 g	53	26.80	17.92	33
Columbia	AG	596	378	36	36.80	20.79	43
Augusta	AG	526	369 g	29	33.80	24.46	27
Roanoke and							
Asheville	KX	335	264	21	19.05	14.52	23
Hickory	KX	400	216	46	22.45	11.88	46
Winston-Salem*	KX	485	99	79	27.10	5.45	79
Greensboro	KX	485	84	82	27.10	4.62	82
Raleigh	WA	435	122	71	24.15	6.71	72
Charlotte	KX & CW	567	174	69	31.60	9.57	69
Spartanburg	KX & AG	565	251	55	30.70	13.80	55
Greenville	KX & AG	543	275	49	29.60	15.12	48
Columbia	KX & AG	606	263	66	31.60	14.47	54
Augusta	KX & AG	535	333	37	28.60	18.32	35
V. Tennessee Valley Cities:							
Bristol# and							
Asheville	KX	188	71	12	10.95	3.91	64
Hickory	KX	253	76	69	14.35	4.18	70
Winston-Salem*	KX	338	124	63	19.00	6.82	64
Greensboro	KX	338	139	58	19.00	7.65	59
Raleigh-Durham	KX	414	209	49	23.10	11.50	50
Charlotte	KX	420	118	71	23.50	6.49	72
Spartanburg	AG	418	137	67	22.60	7.53	66
Greenville	AG	396	113	71	21.50	6.22	71
Columbia	AG	459	204	55	23.50	11.22	52
Augusta	AG	389	232	40	20.50	12.76	37

* Greensboro Fare and Mileage used. AG- Atlanta. CC-Cincinnati.
EI - Lexington, CW- Greensboro, KN- Charleston, W. Va. KX- Knoxville.
WA- Washington. g- via connecting service at Tri-Cities. ** Fare not available.
Includes Johnson City and Kingsport.

SHOWING BY REGIONS FARE AND MILEAGE OF PROPOSED SERVICE OVER EXISTING SERVICE

Between Cities Outside the Piedmont Area

Between	Present Air Service Route	Present Air Service Miles	Proposed Air Miles	Percent Mileage Savings	Present Fare	State's Probable Fare	Percent Fare Saving
Huntington and							
Bristol#	KN	176	135	23	14.10	7.43	47
Jacksonville	KN&AG	705	592	16	44.50	32.56	26
Roanoke	KN&TI	323	183	43	22.20	10.07	54
Richmond	WA	456	336	26	21.70	18.48	14
Norfolk	WA	504	418	17	25.40	22.99	9
Wilmington	WA&NW	709	435	38	**		
Charleston, S.C.	KX&AG	728	432	40	42.70	23.76	44
Savannah	KX&AG	678	475	29	40.20	26.13	35
Macon	KX&AG	504	467	7	33.45	25.69	23
Charleston, W.Va. and							
Roanoke	TI	284	144	49	19.80	7.92	60
Richmond	WA	417	297	28	21.30	16.34	23
Norfolk	WA	465	379	18	25.00	20.85	16
Wilmington	WA	670	396	40	**		
Charleston, S.C.	KX&AG	689	434 g	37	40.30	28.04	30
Savannah	KX&AG	639	514	19	37.80	28.27	25
Jacksonville	KX&AG	666	594 g	10	42.10	36.84	12
Macon	KX&AG	465	469 g	0	31.05	29.96	03
Roanoke and							
Richmond	WA	296	153	14	16.30	8.42	48
Norfolk	WA	344	235	31	20.00	12.93	35
Wilmington	WA	549	252	54	**		
Charleston, S.C.	KX&AG	699	353	49	35.10	19.42	44
Savannah	KX&AG	649	399	38	32.60	21.95	32
Jacksonville	KX&AG	677	513	22	36.90	28.22	23
Macon	KX&AG	475	433	8	25.85	23.82	7
Elkins	WA	352	108	69	19.35	5.94	69
Clarksburg	WA	387	143	63	22.30	7.87	64
Morgantown	WA	417	173	58	25.15	9.52	61
Cincinnati	KX	478	306	35	25.10	16.83	32
Richmond and							
Norfolk	WA	238	82	65	14.20	4.51	68
Cincinnati	WA	493	459	6	28.05	25.25	10
Cincinnati and							
Wilmington	CC&WA	797	541	32	**		
Charleston, S.C.	AG	683	522	23	33.00	28.71	13
Savannah	AG	633	565	10	30.50	31.08	1-
Bristol#	KN	291	225	22	21.55	12.38	42
Louisville and							
Knoxville	EI	228	190	16	**		
Bristol#	EI	328	225	31	**		
Wilmington	AG&CS	829	564	31	**		
Charleston, S.C.	AG	674	522	22	33.85	28.71	15
Jacksonville	AG	651	678	4-	35.65	37.29	4-
Savannah	AG	624	564	9	31.35	31.02	1
Knoxville and							
Wilmington	AG	607	376	38	**		
Charleston, S.C.	AG	452	330	26	21.50	18.15	15
Savannah	AG	402	374	6	19.00	20.57	8-
Jacksonville	AG	429	488	14-	23.30	26.84	13-
Columbus, Ga. and							
Montgomery	D	83	81	2	4.00	4.45	11-
Macon	AG	167	91	45	8.10	5.00	38
Augusta	AG	228	191	16	15.10	10.50	30
Columbia	AG	298	261	12	18.10	14.35	20
Charleston, S.C.	AG	391	354	9	17.35	19.47	12-

** Fare not available. #Includes Johnson City and Kingsport. AG- Atlanta CC- Cincinnati. CS- Charleston, S. C. D- Direct. EI- Lexington. KN- Charleston, W. Va. KX- Knoxville. NW- Norfolk. WA- Washington. g- via connecting service at Tri-City. TI- Tri-City.

Sources: American Aviation Traffic Guide, March 1945
Official Guide of the Airways Dec. 1941
CAB Mileage Booklet No. 1
U. S. Coast & Geodetic Survey Aeronautical Charts 1943.

Exhibit STA-15, pages 1 to 3 (R. 9462-4) entitled *Showing By Routes Present and Proposed Air Mileages and Percentage Savings Between the Cities that Now Have Air Service Authorized—Tables Based on Point to Point Mileages.* The Exhibit shows in tabular form the points on each of the 12 proposed routes, the present and proposed air mileages between all pairs of points; the percentage of mileage saving as to each pair of points; and the same information totalled for the proposed routes.

Exhibit STA-16 (R. 9465) entitled *Comparison of Selected Air Passenger Fares* sets forth 17 pairs of points State proposed to serve where certificated service exists, the mileage, fares and rate per mile.

[R. 9466]

NARRATIVE FOR EXHIBIT STA-17

Exhibit STA-17 is designed to show the improvement in air service that would result for cities on State's proposed routes that do not now have any air service authorized. The combined population living within 25 miles of these 24 points is 2,285,300, yet no one of the points is closer than 30 miles to an airport having regular service. Only four of the 24 are closer than 40 miles to such an airport, and only eleven closer than 50 miles.

Exhibit STA-17, page 2 (R. 9467), entitled *Nearest Airline Stop and Number of Schedules for Cities on State's Proposed Routes Without Air Service Authorized.* This Exhibit lists 24 points having no air service which State proposed to serve. As to each city is set forth (a) population in 25 mile radius; (b) road mileage to airport; (c) nearest airline stop; (d) number of schedules per day, and (e) the directions of air service.

Exhibit STA-18 (R. 9468) entitled *Lack of Adequate Rail Transportation in States to be Served as Shown by Highway Data* lists the states of West Virginia, Ohio, Kentucky, Ten-

nessee, Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. For each state is listed the 1941 state gasoline taxes as to the dollar amount, the rank of the state among the 48 states; the busses garaged in each state according to number and rank among the 48 states; the truck registrations as of December 31, 1941, as to number and rank among the 48 states; and the annual average truck miles in 1941 (except Ohio) and the rank among the 48 states.

Exhibit STA-19 [R. 9469]

AIRMAIL STATISTICS AND SAVINGS

This exhibit shows that while the average rank of the cities on State's proposed routes which had air service in the June 16-22, 1940 survey period was normal for total outgoing airmail volume, that at the same time the rank for ratio of air to first class was below normal. Lack of air service between many of these cities, which are important to each other, would account for this condition, so that the improved service State proposes would increase this ratio considerably. Existing ground transportation, such as between Charlotte and Columbia, although inadequate, is in many cases faster than existing air service.

In cases where air service has been improved since the survey period, the ratio has undoubtedly increased.

Exhibits STA-20 and STA-21 show first, the pounds of air mail from 20 of the 36 cities included in the survey to 21 cities on State's proposed routes; and second, the percent miles saved and pound miles saved between these points. The selection of the 20 cities is based on those whose location would effect the greatest savings, except only those west of the Mississippi that produced over 50,000 pounds of first class mail were used. No savings are shown between points, which are on State's proposed routes, but both of which are outside this proceeding. Point to point mileages were used. Chattanooga and Montgomery are omitted from the list of

21 cities since there is no saving from any of the 20 cities named to them. Meridian is also omitted since State is not showing service west of Montgomery.

These exhibits illustrate, incidentally, the importance of Charlotte which for volume of mail, easily outranks other Carolina cities. It also appears that airmail is used even between points where the distances are short and no air service exists, such as from Richmond to Norfolk. No conclusive deductions can be made regarding the effect of the rate of saving upon the volume since in many cases the saving depends on routes that were not operated during the survey period. However, it is apparent with the limited information provided by the survey that considerable savings would be obtainable in the carriage of mail over State's proposed routes.

Exhibit STA-19 page 2 (R. 9470) is entitled *Airmail and First Class Mail Statistics for Cities on State Airlines Proposed Routes.* This Exhibit lists 23 cities under three sub-headings as follows: (a) Under the sub-heading "North and West of Appalachian Range", Elkins, W. Va., Huntington, W. Va., Charleston, W. Va., Cincinnati, Ohio, Bristol, Tenn. (including Johnson City and Kingsport), Louisville, Ky., Knoxville, Tenn., and Chattanooga, Tenn; (b) under the sub-heading "Piedmont & Contiguous", Charlotte, N. C., Greensboro, N. C., Columbia, S. C., Richmond, Va., Raleigh, N. C., Greenville, S. C., Spartanburg, S. C., Augusta, Ga., Macon, Ga., Montgomery, Ala., Meridian, Miss., and (c) under the sub-heading "Atlantic Seaboard & Contiguous", Norfolk, Va., Charleston, S. C., Savannah, Ga., and Jacksonville, Fla. For each of these cities was listed for the period of the CAB air mail survey of June 16-22, 1940, (a) the outgoing air mail in pounds, (b) the national rank of the city, (c) the outgoing first class mail in pounds, (d) the outgoing air mail ratio to outgoing first class mail, (e) the national rank in first class mail poundage, and (f) average amount of each type of mail and rank and comparison with the national totals.

Exhibit STA-20 (R. 9471) is entitled *Outgoing Airmail Poundage from 20 of the 36 Cities Included in June '40 Survey to 21 State Cities Which Had Airmail Service During Survey Period.* Down the left-hand column of this page are listed the following cities:

Augusta, Ga.	Huntington
Bristol, Tenn.	Jacksonville
Charleston, S. C.	Knoxville
Charleston, W. Va.	Louisville
Charlotte, N. C.	Macon
Cincinnati, Ohio.	Norfolk
Columbia, S. C.	Raleigh
Greensboro, N. C.	Richmond
Greenville, S. C.	Savannah
	Spartanburg

In the column across the page are listed the following cities:

Chicago	Dallas
Detroit	Columbus
Los Angeles	Denver
Cleveland	Seattle
San Francisco	Richmond
St. Louis	Memphis
Pittsburgh	Knoxville
Kansas City	Orlando
Cincinnati	Muskegon
Minneapolis	Traverse City

The air mail poundage exchange between individual cities in the first and second groups is listed in tabular form for the majority of pairs of points set forth, together with the total air mail poundage carried in the June 16-22, 1940 survey.

Exhibit STA-21, pages 1 and 2 (R. 9472-3), is entitled *Percent Miles Saved and Pound Miles Saved For Outgoing Airmail From 20 to 36 Cities to 21 State Cities That Had Service During and For the Survey Period.* This lists the two sets of cities shown in STA-20 in the same tabular form,

together with the percentage of miles and percentage of pound-miles to be saved by State's proposed services.

Exhibit STA-22 (R. 9473-9491) is entitled *Need for Routes Shown By 45 Months Actual Operating Experience—State Traffic Records* and is 19 pages in length. It sets forth in detail every trip, request and inquiry for air transportation received by State for the 45-month period, April 3, 1941, to December 31, 1944. The exhibit shows that during the period State actually carried 1,463 passengers for a total of 269,246 passenger miles, a total of 294,054 ship miles (including deadhead). The average trip length was 184 miles and the average passengers per month was 32.5. In addition 3,203 inquiries and requests for specific non-scheduled trips by State. The actual passengers of 1,463 and the 3,203 inquiries and requests totaled 5,666. The exhibit analyzes the 5,666 figure according to its proposed routes, actual and potential passenger miles, between Charlotte, N. C., and various points and between certain other pairs of points proposed to be served by State.

The analysis includes reference in each case to the air carrier if any certificated at one of the pairs of points and the portion of the passenger milehaul which the certificated carrier is estimated to participate in, and the portion of the passenger mileage which State estimated it would participate in.

Exhibit STA-23 (R. 9492) entitled *Comparison of State Non-Scheduled Service With '33 Rail and March '41 Air.* This exhibit analyzes State's non-scheduled traffic experience between Charlotte, N. C., and Columbia, S. C., for August 1941 and compares same with the 1933 rail traffic between such points and shows a 7.6 percent penetration of that traffic to be estimated. Eastern's experience between Charlotte and Greensboro and Delta's experience between Columbia and Charlston all being pairs of points about 86 miles apart.

Exhibit STA-24 (R. 9493) is entitled *Showing Predominance of Local Air Traffic Over Long Distance Air*

Traffic, in Area to be Served. This exhibit based on the CAB November 1939 Air survey lists the following cities proposed to be served:

Cincinnati, Ohio	Norfolk, Va.
Huntington, W. Va.	Richmond, Va.
Charleston, W. Va.	Knoxville, Tenn.
Elkins, W. Va.	Chattanooga, Tenn.
Louisville, Ky.	Greensboro, N. C.
Charlotte, N. C.	Raleigh, N. C.
Bristol, Va.	Macon, Ga.
Jacksonville, Fla.	Columbus, Ga.
Greenville, S. C.	Columbia, S. C.
Spartanburg, S. C.	Savannah, Ga.
Augusta, Ga.	Charleston, S. C.
Montgomery, Ala.	

Opposite each is city as listed (a) total number of passengers generated, (b) the number of passengers travelling (i) under 100 miles (ii) 100-200 miles (iii) 200-300 miles and (iv) over 300 miles. The passenger miles per trip are analyzed, totalled and compared with the United States totals. The exhibit bears the note: "Traffic under 100 miles is more than twice as much for this area as for the country as a whole."

Exhibit STA-25 (R. 9494) is entitled *Effect of Adding Additional Schedules* and purports to show that adding a second carrier can increase traffic to the first carrier, rather than divert traffic from the first carrier, by tabulating the division of local New York to Washington business between Eastern Air Lines and American Airlines in November 1939 and September 1940.

Exhibit STA-26 (R. 9495) is entitled *Showing the Relation of Increased Traffic to Mileage Saved by the Inauguration of a New Route.* The exhibit makes certain studies and comparisons of traffic development between Cincinnati and Charlotte by air and rail. Comparative studies are detailed of Atlanta-Cincinnati, Atlanta-Knoxville, and Cincinnati-Knoxville traffic development compared with the 1933 rail,

the March 1941 air survey, actual passengers in 1942, mileage saved and increased number of passengers carried.

Exhibit STA-27 (R. 9496-9497) is entitled *Showing the Effect of the Volume of '33 Rail Traffic—Frequency of Service and Over All Cost on Air Traffic for Over and Under 150 Ground Miles.* This is a complex comparison of surface and air schedules between certain pairs of points; arriving at a formula as to adequate air schedules between pairs of points over and under 150 miles apart; selection of median bus and rail coach fares; studies and projections of the growth of air traffic movement; comparisons of air and ground costs; and other matters.

Exhibit STA-28 (R. 9498-9499) is entitled *The Growth of Air Traffic in the Area of State Airlines Proposed Routes.* This exhibit is the study of the growth of air traffic over routes 5, 6, 24 and 25 which the exhibit states are in the area within which State's proposed routes lie. The exhibit compares the air traffic on each of those routes of 1938, 1939, 1940 and 1941 in the following respects; (a) Revenue passenger miles; (b) number revenue passengers carried; (c) mail pounds; (d) mail pound miles; (e) express pounds; (f) express pound miles; (g) percentage increase for each year for each category.

Exhibit STA-29 (R. 9500) is entitled *Air Traffic at Cities on State's Proposed Routes that have Air Service.* The following cities are listed:

Clarksburg, W. Va.
Elkins, W. Va.
Huntington, W. Va.
Charleston, W. Va.
Cincinnati, Ohio
Tri-City, Va./Tenn.
Louisville, Ky.
Knoxville, Tenn.
Chattanooga, Tenn.
Greensboro, N. C.
Charlotte, N. C.
Columbia, S. C.
Richmond, Va.
Raleigh, N. C.
Hickory, N. C.
Greenville, S. C.
Spartanburg, S. C.
Augusta, Ga.
Macon, Ga.
Montgomery, Ala.
Norfolk, Va.
Charleston, S. C.
Savannah, Ga.
Brunswick, Ga.
Jacksonville, Fla.

For each city traffic statistics as to passengers originated, passenger miles, and rank in passengers among cities in nation and rank in passenger miles among cities in nation are given for the CAB survey months of November 1939, September 1940, and March 1941.

Exhibit STA-30 (R. 9501-9508) is 8 pages in length and entitled *Showing the Air Traffic of Cities Having Airline Service in Terms of Economic Characteristics and Determination of Typical Ratios.* This exhibit is a study of cities having air service. Three classes of cities were taken (a) those having service in most directions, (b) those having less service directions, and (c) those cities having service in not more than two directions. The total population, retail sales, number of resident telephones, postal receipts, indicated income tax returns and actual air passengers generated for each city. For each class averages of each figure were taken and ratios between the various factors were determined.

Exhibit STA-31 (R. 9509-9517), an exhibit of nine pages, is entitled *Estimate of Traffic (No. of Passengers) to be Produced by Cities on State's Proposed Routes.* In this exhibit the ratios developed in Exhibit STA-30 are applied to each of the cities State proposed to serve according to the same classification formula. As to each of those cities already having air service the increased traffic estimated to be generated was thus projected. As to each of those proposed cities having then no air service the expected number of passengers was projected. These estimates were then totalled by routes; passenger miles; traffic density; and projected load factors, etc.

Exhibit STA-32 (R. 9518-9520) entitled *Airmail Estimate* details the incoming airmail to the twenty-one cities from the thirty-six survey cities included in the survey and included in State routes. The exhibit also estimates the airmail from the forty cities on State's proposed routes; it estimates the increase in airmail poundage and then converts this figure into estimated pound miles.

Exhibit STA-33 (R. 9521-9524) entitled *Revenue Estimate for State Airlines, Inc., for the Year 1946*, describes method of computation and shows estimate of total revenue for all twelve routes at $4,855,251 and estimate of total cost at $5,003,919; the exhibit also describes method of computation and shows revenue estimate and cost summary on six combinations of routes, reproduced as follows:

REVENUE ESTIMATE AND COST SUMMARY ON SIX COMBINATIONS OF ROUTES

Combination No.	Routes	Intergration Percent		DC3's Total	DC3's Per Revenue Plane Mile	DC3's Less Food & Stewardess	DC3's Three Year Depreciation	Lodestars
1.	7.8	25	Revenue Plane Miles	1,407,456				
			Revenue Passenger Miles	18,024,160	12.8			
			Revenue(106.5% Pass.Mis.x 5.5¢)	$1,085,465	.771			
			Total Cost	1,144,725	.820			
2.	3.7	37	Revenue Plane Miles	1,464,480				
			Revenue Passenger Miles *	17,116,625	11.6	11.6	11.6	11.6
			Revenue (106.5% Pass.Mis.x5.5¢)*	1,002,606	.684	.684	.684	.684
			Total Cost	1,165,896	.794	.771	.875	.727
3.	2,3,7,8	41	Revenue Plane Miles	2,842,128				
			Revenue Passenger Miles	38,725,270	13.6			
			Revenue (106.5% Pass.Mis.x5.5¢)	2,268,332	.798			
			Total Cost	2,172,971	.763			
4.	3,4,5,7	51	Revenue Plane Miles	2,339,280				
			Revenue Passenger Miles	28,180,865	12.0			
			Revenue (106.5% Pass.Mis.x5.5¢)	1,650,694	.705			
			Total Cost	1,815,421	.775			
5.	3,4,5,7,8,9	51	Revenue Plane Miles	3,665,088				
			Revenue Passenger Miles	42,980,920	11.7			
			Revenue (106.5% Pass.Mis.x5.5¢)	2,517,607	.686			
			Total Cost	2,705,966	.738			
6.	2,3,4,5,7,8	70	Revenue Plane Miles	3,358,584				
			Revenue Passenger Miles	45,404,725	13.5	13.5	13.5	13.5
			Revenue(106.5% Pass.Mis.x5.5¢)	2,659,581	.791	.791	.791	.791
			Total Cost	2,566,120	.764	.742	.863	.694

Ex.STA-53 Ex.STA-55 Ex.STA-56 Ex.STA-54

*This traffic and revenue does not include the addition of 30% of Route No. 5 traffic as shown on page 2 of this exhibit since passengers per plane mile for Route 2 (which would carry the increase) are 19.8 (page 9, Exhibit STA-31). In practice this traffic would be accomodated by an extra schedule on Route 5.

Exhibit STA-34 [R. 9525]

SCHEDULES

NARRATIVE

These tentative schedules provide an initial frequency of two round trips a day over all routes except 5 and 10, which include trips over duplicating segments of different routes, as, for example, between Montgomery and Macon on Routes 11 and 12.

Thus, more than two schedules are provided both by State and paralleling services only between points where there is a high '33 rail traffic, the distance is short, ground transportation is inadequate, or the schedules are necessary to produce local traffic. Such examples are Knoxville to Asheville, and Charlotte to Columbia.

Because of the completeness of service proposed by these schedules, a reduction in the number of routes would cause some traffic to flow over the remaining routes. For this reason, more schedules would become necessary, such as, for example, omission of Route 2 would necessitate two round trips over Route 5.

Included in State's applications filed for this case was service on Route 6 to Detroit and Route 1 to Pittsburgh. Another Detroit-Jacksonville route via Roanoke was included, but is not shown. By the Board's order, both Detroit routes were cut off at Portsmouth and the Pittsburgh route at Morgantown.

The schedules show Detroit and Pittsburgh on Routes 6 and 1, but the mileages, operating costs, and traffic figures do not include the severed portions. If these routes were authorized, as included in this proceeding, trips on Route 6 could proceed to Cincinnati over Route 2, and trips on Route 1 connect at Morgantown with PCA.

The Detroit-Jacksonville route via Roanoke was omitted as less essential in part, then the routes paralleled, although of equal importance in its entirety.

Also included in State's applications, but not shown in the schedules, is service between Wilmington and Florence as a part of the Wilmington-Montgomery route. With the schedules, as shown, service between Wilmington and Columbia (or on to Montgomery), including Florence and Sumter, is available via Fayetteville as follows:

Read Down	Route			Route	Read Up
10:55 am	7W	Lv. Wilmington	Ar.	3E(2)	11:33pm
11:30 am		Ar. Fayetteville	Lv.		10:58pm
11:34 am	11W	Lv. Fayetteville	Ar.	11E(2)	10:24pm
1:00 pm		Ar. Columbia	Lv.		8:58pm

This service with elapsed time of 2:05 hours and 2:35 hours compares with the fastest rail service in January 1944 of 8:10 hours, and one schedule a day. In October 1943, there was no through bus service. The fastest of any connecting bus service was 7:48 hours. Thus Wilmington-Columbia-Montgomery service is proposed as a less essential alternate, or addition, to Norfolk-Montgomery service because of the availability of the Fayetteville connection.

Also included in State's applications, but not shown in the schedules, in service between Charlotte and Montgomery on the New Bern-Montgomery route. Service between New Bern and Charlotte, and Charlotte and Chattanooga, is indicated as through service between New Bern and Chattanooga, and combined as Route 9.

Since the schedules for the twelve routes are planned for the convenience of local traffic along the route, they stop at all points and operate at reasonable hours. With the exception of the Detroit and Pittsburgh-Jacksonville routes, none leave a terminal earlier than 7:55am, nor arrive at their destination after midnight, except for one trip on Route 11. The earliest and latest hours of departure and arrival for the Detroit and Pittsburgh-Jacksonville routes are 6:20am and 1:56am.

Proposed Schedules

All Times Eastern War Time

Read Down						Read Up	
1S	1S(2)	Miles	Route 1			1N	1 N(2)
7:45am	5:55pm		Lv.	Pittsburgh*	Ar.	1:31pm	1:56am
8:13am	6:23pm	0	Lv.	Morgantown	Ar.	1:03pm	1:28am
8:34am	6:44pm	30	Lv.	Clarksburg	Lv.	12:47pm	1:12am
8:58am	7:08pm	65	Lv.	Elkins	Lv.	12:23pm	12:48am
				(Clifton-Forge	Lv.	11:46am	12:11am
9:35am	7:45pm	140	Lv.	Covington)			
9:52am	8:02pm	173	Ar.	Roanoke	Lv.	11:24am	11:49pm
10:02am	8:17pm	173	Lv.	Roanoke	Ar.	11:14am	11:39pm
10:38am	8:53pm	257	Ar.	Greensboro	Lv.	10:38am	11:03pm
10:43am	8:58pm	257	Lv.	Greensboro	Ar.	10:33am	10:58pm
10:53am	9:08pm	272	Ar.	Winston-Salem	Lv.	10:23am	10:48pm
10:58am	9:13pm	272	Lv.	Winston-Salem	Ar.	10:18am	10:43pm
11:24am	9:39pm	310	Lv.	Salisbury	Lv.	9:57am	10:22pm
11:44am	9:59pm	347	Ar.	Charlotte	Lv.	9:32am	9:57pm
11:59am	10:14pm	347	Lv.	Charlotte	Ar.	9:17am	9:42pm
12:19pm	10:34pm	372	Lv.	Rock Hill	Lv.	9:02am	9:37pm
12:49pm	11:04pm	436	Ar.	Columbia	Lv.	8:27am	9:02pm
12:54pm	11:09pm	436	Lv.	Columbia	Ar.	8:22am	8:47pm
1:48pm	12:03am	572	Ar.	Savannah	Lv.	7:28am	7:53pm
1:58pm	12:13am	572	Lv.	Savannah	Ar.	7:18am	7:43pm
2:31pm	12:46am	633	Lv.	Brunswick	Lv.	6:50am	7:15pm
2:56pm	1:11am	686	Ar.	Jacksonville	Lv.	6:20am	6:45pm

2E	2E(2)		Route 2			2W	2W(2)
8:45am	5:00pm	0	Lv.	Cincinnati	Ar.	2:12pm	11:43pm
9:20am	5:35pm	80	Ar.	Portsmouth	Lv.	1:37pm	11:08pm
9:25am	5:40pm	80	Lv.	Portsmouth	Ar.	1:32pm	11:03pm
9:52am	6:07pm	123	Lv.	Huntington	Lv.	1:10pm	10:41pm
10:18am	6:33pm	162	Lv.	Charleston	Lv.	12:44pm	10:15pm
10:47am	7:02pm	213	Lv.	Beckley	Lv.	12:15pm	9:46pm
				(Princeton-	Lv.	11:53am	9:24pm
11:09am	7:24pm	244	Lv.	Bluefield)			
11:38am	7:53pm	306	Ar.	Roanoke	Lv.	11:19am	8:50pm
11:53am	8:08pm	306	Lv.	Roanoke	Ar.	11:04am	8:35pm
12:20pm	8:35pm	349	Lv.	Lynchburg	Lv.	10:42am	8:13pm
1:04pm	9:19pm	441	Lv.	Petersburg	Lv.	9:58am	7:29pm
1:22pm	9:37pm	459	Lv.	Richmond	Lv.	9:40am	7:11pm
1:57pm	10:12pm	541	Ar.	Norfolk	Lv.	9:00am	6:31pm

3E	3E(2)		Route 3			3W	3W(2)
8:30am	6:54pm	0	Lv.	Louisville	Ar.	12:54pm	11:59pm
9:43am	8:07pm	190	Ar.	Knoxville	Lv.	11:41am	10:46pm
9:53am	8:12pm	190	Lv.	Knoxville	Ar.	11:36am	10:41pm
10:31am	8:50pm	278	Ar.	Asheville	Lv.	10:58am	10:03pm
10:36am	9:00pm	278	Lv.	Asheville	Ar.	10:48am	9:53pm
11:14pm	9:38pm	368	Ar.	Charlotte	Lv.	10:10am	9:15pm
11:29am	9:53pm	368	Lv.	Charlotte	Ar.	9:55am	9:00pm
				(Pinehurst	Lv.	9:17am	8:22pm
12:11pm	10:36pm	455	Lv.	Southern Pines)			
12:33pm	10:58pm	485	Lv.	Fayetteville	Lv.	8:55am	8:00pm
1:09pm	11:33pm	566	Ar.	Wilmington	Lv.	8:15am	7:20pm

4S	4S(2)		Route 4			4N	4N(2)
10:35am	1:30pm	0	Lv.	Roanoke	Ar.	10:21am	1:02pm
11:09am	2:04pm	63	Lv.	Danville	Lv.	9:52am	12:33pm
11:37am	2:32pm	122	Ar.	(Raleigh-	Lv.	9:19am	12:00pm
				Durham)			
	2:37pm	122	Lv.	(Raleigh-			
				Durham)	Ar.	9:14am	
	3:06pm	171	Lv.	Fayetteville	Lv.	8:50am	
	3:41pm	252	Ar.	Wilmington	Lv.	8:10am	

* Applied for but not in this proceeding

Proposed Schedules

All Times Eastern War Time

Read Down						Read Up	
	5E	Miles	Route 5			5W	
	11:00am	0	Lv.	Louisville	Ar.	7:41pm	
	11:35am	66	Lv.	Lexington	Lv.	7:11pm	
				(Princeton-	Lv.	6:53pm	
	12:53pm	256	Lv.	Bluefield)			
	1:22pm	318	Ar.	Roanoke	Lv.	6:0 pm	
	1:37pm	318	Lv.	Roanoke	Ar.	5:54pm	
	2:04pm	361	Lv.	Lynchburg	Lv.	5:32pm	
	2:48pm	453	Lv.	Petersburg	Lv.	4:58pm	
	3:06pm	471	Lv.	Richmond	Lv.	4:40pm	
	3:41pm	553	Ar.	Norfolk	Ar.	4:00pm	
6S	6S(2)			Route 6		6N	6N(2)
6:30am	4:00pm		Lv.	Detroit*	Ar.	2:54pm	1:54am
7:04am	4:34pm		Lv.	Toledo *	Lv.	2:25pm	1:25am
7:30am	5:00pm		Lv.	Findlay*	Lv.	1:59pm	12:59am
7:56am	5:26pm		Lv.	Marion *	Lv.	1:33pm	12:33am
8:24am	5:54pm		Lv.	Columbus *	Lv.	1:05pm	12:05am
8:54am	6:24pm		Lv.	Chillicothe*	Lv.	12:35am	11:35pm
9:23am	6:53pm	0	Lv.	Portsmouth	Ar.	12:01pm	11:01pm
9:50am	7:20pm	43	Lv.	Huntington	Lv.	11:39am	10:39pm
10:44am	8:14pm	178	Ar.	Tri-City	Lv.	10:40am	9:40pm
10:54am	8:24pm	178	Lv.	Tri-City	Ar.	10:30am	9:30pm
11:25am	8:55pm	249	Ar.	Asheville	Lv.	9:59am	8:59 pm
11:30am	9:00pm	249	Lv.	Asheville	Ar.	9:54am	8:54pm
11:57am	9:27pm	291	Lv.	Greenville	Lv.	9:32am	8:32pm
12:19pm	9:49pm	323	Lv.	Anderson	Lv.	9:10am	8:10pm
12:43pm	10:13pm	359	Lv.	Greenwood	Lv.	8:46am	7:46pm
1:07pm	10:37pm	410	Ar.	Augusta	Lv.	8:17am	7:17pm
1:17pm	10:47pm	410	Lv.	Augusta	Ar.	8:07am	7:07pm
2:23pm	11:53pm	563	Lv.	Waycross	Lv.	7:06am	6:06pm
2:54pm	12:24am	635	Ar.	Jacksonville	Lv.	6:30am	5:30pm
7E	7E(2)			Route 7		7W	7W(2)
10:30am	4:00pm	0	Lv.	Louisville	Ar.	3:54pm	8:45pm
11:05am	4:35pm	66	Lv.	Lexington	Lv.	3:24pm	8:15pm
12:07pm	5:37pm	225	Ar.	Tri-City	Lv.	2:17pm	7:08pm
12:12pm	5:42pm	225	Lv.	Tri-City	Ar.	2:12pm	7:03pm
1:02pm	6:32pm	349	Ar.	Winston-Salem	Lv.	1:22pm	6:13pm
1:17pm	6:47pm	349	Lv.	Winston-Salem	Ar.	1:07pm	5:58pm
1:27pm	6:57pm	364	Ar.	Greensboro	Lv.	12:57pm	5:48pm
1:32pm	7:02pm	364	Lv.	Greensboro	Ar.	12:52pm	5:43pm
1:54pm	7:24pm	395	Lv.	Burlington	Lv.	12:35pm	5:26pm
2:15pm	7:45pm	434	Ar.	(Raleigh-	Lv.	12:09pm	5:00pm
				Durham)			
	7:50pm	434	Lv.	(Raleigh-			
				Durham)	Ar.	11:59am	
	8:19pm	483	Lv.	Fayetteville	Lv.	11:35am	
	8:54pm	564	Ar.	Wilmington	Lv.	10:55am	
8E	8E(2)			Route 8		8W	8W(2)
8:50am	2:45pm	0	Lv.	Cincinnati	Ar.	12:22pm	9:27pm
9:25am	3:20pm	66	Lv.	Lexington	Lv.	11:52am	8:57pm
10:27am	4:22pm	225	Ar.	Tri-City	Lv.	10:45am	7:50pm
10:37am	4:32pm	225	Lv.	Tri-City	Ar.	10:35am	7:40pm
11:15am	5:10pm	301	Lv.	Hickory	Lv.	10:02am	7:07pm
11:37am	5:32pm	343	Ar.	Charlotte	Lv.	9:35am	6:40pm
11:52am	5:47pm	343	Lv.	Charlotte	Ar.	9:20am	6:25pm
12:32pm	6:27pm	429	Ar.	Columbia	Lv.	8:40am	5:45pm
12:37pm	6:32pm	429	Lv.	Columbia	Ar.	8:35am	5:40pm
1:17pm	7:12pm	522	Ar.	Charleston	Lv.	7:55am	5:00pm

* Applied for but not in this proceeding

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Proposed Schedules

All Times Eastern War Time

Read Down — Read Up

9E	9E(2)	Miles	Route 9		9W	9W(2)
8:25am	3:30pm	0	Lv. Chattanooga	Ar.	2:22pm	7:52pm
9:33am	4:38pm	160	Lv. Greenville	Lv.	1:19pm	6:49pm
9:58am	4:58pm	183	Lv. Spartanburg	Lv.	12:59pm	6:29pm
10:27am	5:27pm	235	Lv. Rock Hill	Lv.	12:30pm	6:00pm
10:42am	5:42pm	260	Ar. Charlotte	Lv.	12:10pm	5:40pm
10:57am	5:57pm	260	Lv. Charlotte	Ar.	11:55am	5:25pm
11:49am	6:49pm	390	Ar. (Raleigh-Durham)	Lv.	11:03am	4:33pm
11:54am	6:54pm	390	Lv. (Raleigh-Durham)	Ar.	10:58am	4:28pm
12:25pm	7:25pm	446	Lv. Goldsboro	Lv.	10:32am	4:02pm
12:52pm	7:52pm	501	Ar. New Bern	Lv.	10:00am	3:30pm

10E		Route 10		10W	
3:30pm	0	Lv. Louisville	Ar.	3:04pm	
4:48pm	190	Lv. Knoxville	Lv.	1:51pm	
5:26pm	278	Ar. Asheville	Lv.	1:08pm	
5:36pm	278	Lv. Asheville	Ar.	12:58pm	
6:06pm	320	Lv. Greenville	Lv.	12:36pm	
6:26pm	344	Lv. Spartanburg	Lv.	12:16pm	
6:58pm	427	Ar. Columbia	Lv.	11:36am	
7:08pm	427	Lv. Columbia	Ar.	11:26am	
7:33pm	464	Lv. Orangeburg	Lv.	11:06am	
8:21pm	564	Lv. Savannah	Lv.	10:18am	
8:54pm	625	Lv. Brunswick	Lv.	9:45am	
9:19pm	678	Ar. Jacksonville	Lv.	9:15am	

11E	11E(2)		Route 11		11W	11W(2)
11:45am		0	Lv. Montgomery	Ar.	3:56pm	
12:25pm		81	Lv. Columbus	Lv.	3:21pm	
1:03pm		172	Ar. Macon	Lv.	2:38pm	
1:13pm	7:30pm	172	Lv. Macon	Ar.	2:28pm	7:13pm
2:00pm	8:17pm	272	Lv. Augusta	Lv.	1:46pm	6:31pm
2:31pm	8:48pm	342	Ar. Columbia	Lv.	1:10pm	5:55pm
2:41pm	8:58pm	342	Lv. Columbia	Ar.	1:00pm	5:45pm
3:05pm	9:22pm	377	Lv. Sumter	Lv.	12:41pm	5:26pm
3:32pm	9:49pm	419	Lv. Florence	Lv.	12:14pm	4:59pm
4:12pm	10:29pm	500	Lv. Fayetteville	Lv.	11:34am	4:19pm
4:42pm	10:59pm	553	Lv. Goldsboro	Lv.	11:04am	3:49pm
5:08pm	11:25pm	593	Lv. Greenville	Lv.	10:38am	3:23pm
5:48pm	12:05am	673	Lv. Elizabeth City	Lv.	9:58am	2:43pm
6:11pm	12:28am	717	Ar. Norfolk	Lv.	9:30am	2:15pm

12E	12E(2)		Route 12		12W	12W(2)
	6:00pm	0	Lv. Montgomery	Ar.		8:41pm
	6:40pm	81	Lv. Columbus	Lv.		7:06pm
	7:18pm	172	Ar. Macon	Lv.		7:23pm
2:00pm	7:28pm	172	Lv. Macon	Ar.	1:43pm	7:13pm
2:28pm	7:56pm	215	Lv. Dublin	Lv.	1:20pm	6:50pm
3:13pm	8:41pm	325	Ar. Savannah	Lv.	12:30pm	6:00pm

R. 9529

Exhibit STA-35
Page 1 of 5 Pages

CONNECTIONS

Narrative

Pages 2 and 3 of this exhibit show 66 connections that State would make with its own routes, that would be of value to passengers in comparison with available ground transportation. These connections do not necessarily mean a faster service than now existing between the terminal points, but provide an alternate service, particularly useful among the intermediate points and useful as to different times of the day and as to stopovers.

For example, Jacksonville to Cincinnati via Roanoke would provide one carrier service with a 24 minute layover at Roanoke between all points on Route 1 south of Roanoke to those on Route 2 west of Roanoke.

Using these connections between State's routes, State would furnish useful one carrier service between 349 different pairs of points, one point of each pair lying on a different route than the other.

Taking the 12 routes individually into consideration, State would connect with one plane service, 331 pairs of points, each pair lying wholly on one route, and no two pairs being the same (although actually two or more routes in several cases serve the same pairs). Thus, State's schedules show that for these 12 routes - omitting the Detroit and Pittsburgh portions - State would furnish one carrier service to a total of 680 different pairs of points.

Pages 4 and 5 of this exhibit show that State's proposed schedules would make available 67 connections with existing service. Such connections will furnish service between countless pairs of points not connected now, or included above, as well as alternate routings.

The schedules thus show a complete integration, not only among the proposed routes, but also of these routes with existing routes.

R. 9590

Exhibit STA-35
Page 2 of 5 Pages

Connections

Between State's Proposed Schedules

Route Direction	From Terminal Point	Leaves	Connects Route	Connecting Point	Arrives	Leaves	For Terminal Point	Arrives
1S(2)	Morgantown	6:28pm	2E(2)	Roanoke	8:02pm	8:08pm	Norfolk	10:12pm
2W	Norfolk	9:00am	1N	Roanoke	11:04am	11:24am	Morgantown	1:03pm
1S	Morgantown	8:13am	4S	Roanoke	9:52am	10:35am	Raleigh	11:37am
4N	Wilmington	10:21am	1N	Roanoke	10:21am	11:24am	Morgantown	1:03pm
1N	Jacksonville	6:20am	2W	Roanoke	11:14am	11:19am	Cincinnati	2:12pm
2E(2)	Cincinnati	5:00pm	1S(2)	Roanoke	7:53pm	8:17pm	Jacksonville	1:11am
5E	Louisville	11:00am	4S(2)	Roanoke	1:22pm	1:30pm	Wilmington	3:41pm
1N	Jacksonville	6:20am	3W	Charlotte	9:17am	10:10am	Louisville	12:54pm
1N(2)	Jacksonville	6:45pm	3E(2)	Charlotte	9:42pm	9:53pm	Wilmington	11:33pm
3W(2)	Wilmington	7:20pm	1N(2)	Charlotte	9:00pm	9:57pm	Morgantown	1:28am
1S	Morgantown	8:13am	8E	Charlotte	11:44am	11:52am	Charleston	1:17pm
8W	Charleston	7:55am	1N	Charlotte	9:20am	9:32am	Morgantown	1:03pm
1S	Morgantown	8:13am	9W	Charlotte	11:44am	12:10pm	Chattanooga	2:22pm
1N	Jacksonville	6:20am	9E	Charlotte	9:17am	10:57am	New Bern	12:52pm
9W	New Bern	10:00am	1S	Charlotte	11:15am	11:59am	Jacksonville	2:56pm
9E	Chattanooga	8:30am	1S	Charlotte	10:42am	11:59am	Jacksonville	2:56pm
3W	Wilmington	8:15am	9W	Charlotte	9:55am	12:10pm	Chattanooga	2:22pm
9E	Chattanooga	8:30am	3E	Charlotte	10:42am	11:29am	Wilmington	1:09pm
3E	Louisville	8:30am	8E	Charlotte	11:14am	11:52am	Charleston	1:17pm
8W	Charleston	7:55am	3W	Charlotte	9:20am	10:10am	Louisville	12:54pm
8E(2)	Cincinnati	2:45pm	9E(2)	Charlotte	5:32pm	5:57pm	New Bern	7:52pm
9E	Chattanooga	8:30am	8E	Charlotte	10:42am	11:52am	Charleston	1:17pm
9E(2)	Chattanooga	3:30pm	8E(2)	Charlotte	5:42pm	5:47pm	Charleston	7:12pm
1N(2)	Jacksonville	6:45pm	11E(2)	Columbia	8:47pm	8:58pm	Norfolk	12:28am
1S	Morgantown	8:13am	11W	Columbia	12:49pm	1:10pm	Montgomery	3:56pm
11E(2)	Macon	7:30pm	1N(2)	Columbia	8:48pm	9:02pm	Morgantown	1:28am
11W(2)	Norfolk	2:15pm	10E	Columbia	5:45pm	7:08pm	Jacksonville	9:19pm
8W(2)	Charleston	5:00pm	1E(2)	Columbia	5:40pm	5:55pm	Macon	7:13pm
11W(2)	Norfolk	2:15pm	8E(2)	Columbia	5:45pm	6:32pm	Charleston	7:12pm
2E	Cincinnati	8:45am	6S	Huntington	9:47am	9:50am	Jacksonville	2:54pm
2E(2)	Cincinnati	5:00pm	6S(2)	Huntington	6:02pm	7:20pm	Jacksonville	12:24am
6N	Jacksonville	6:30am	2W	Huntington	11:34am	1:10pm	Cincinnati	2:12pm
6N(2)	Jacksonville	5:30am	2W(2)	Huntington	10:34pm	10:41pm	Cincinnati	11:43pm
3E	Louisville	8:30am	6S	Asheville	10:31am	11:30am	Jacksonville	2:54am
3E(2)	Louisville	6:54pm	6S(2)	Asheville	8:50pm	9:00pm	Jacksonville	12:24am
6N	Jacksonville	6:30am	3W	Asheville	9:54am	10:58am	Louisville	12:54pm
6N(2)	Jacksonville	5:30pm	3W(2)	Asheville	8:54pm	10:03pm	Louisville	11:59pm
6S(2)	Portsmouth	6:53pm	3E(2)	Asheville	8:55pm	9:00pm	Wilmington	11:33pm
6N	Jacksonville	6:30am	3E	Asheville	9:54am	10:36am	Wilmington	1:09pm
6N(2)	Jacksonville	5:30pm	3E(2)	Asheville	8:54pm	9:00pm	Wilmington	11:33pm
3W	Wilmington	8:15am	6S	Asheville	10:48am	11:30am	Jacksonville	2:54pm
11E(2)	Macon	7:30pm	3E(2)	Fayetteville	10:24pm	10:58pm	Wilmington	11:33pm
7W	Wilmington	11:00am	11W	Fayetteville	11:30am	11:34am	Montgomery	3:56pm
9W	New Bern	10:00am	7W	Raleigh	10:58am	12:09pm	Louisville	3:54pm
9W(2)	New Bern	3:30pm	7W(2)	Raleigh	4:28pm	5:00pm	Louisville	8:45pm
7E	Louisville	10:30am	4S(2)	Raleigh	2:15pm	2:37pm	Wilmington	3:41pm
8E	Cincinnati	8:50am	6S	Tri-City	10:27am	10:54am	Jacksonville	2:54pm
6N	Jacksonville	6:30am	8W	Tri-City	10:30am	10:45am	Cincinnati	12:22pm
8W	Charleston	7:55am	6N	Tri-City	10:35am	10:40am	Portsmouth	12:01pm
8E	Cincinnati	8:50am	7E	Tri-City	10:27am	12:12am	Raleigh	2:15pm
8E(2)	Cincinnati	2:45pm	7E(2)	Tri-City	4:22pm	5:42pm	Wilmington	8:54pm
7W(2)	Raleigh	5:00pm	8W(2)	Tri-City	7:03pm	7:50pm	Cincinnati	9:27pm
6S	Portsmouth	9:23am	7E	Tri-City	10:44am	12:12pm	Raleigh	2:15pm

Continued next page

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Connections

Between State's Proposed Schedules

Route Direction	From Terminal Point	Leaves	Connects Route	Connecting Point	Arrives	Leaves	For Terminal Point	Arrives
6S	Portsmouth	9:23am	9W	Greenville	11:52am	1:19pm	Chattanooga	2:22pm
9E	Chattanooga	8:30am	6N	Greenville	9:28am	9:32am	Portsmouth	12:01pm
6N	Jacksonville	6:30am	9E	Greenville	9:27am	9:38am	New Bern	12:52pm
9E(2)	Chattanooga	3:30pm	10E	Greenville	4:33pm	6:06pm	Jacksonville	9:19pm
10W	Jacksonville	9:15am	9W	Greenville	12:31pm	1:19pm	Chattanooga	2:22pm
6S	Portsmouth	9:23am	11W	Augusta	1:07pm	1:46pm	Montgomery	3:56pm
9W(2)	New Bern	3:30pm	11E	Goldsboro	4:28pm	4:42pm	Norfolk	6:11pm
11W	Norfolk	9:30am	9E	Goldsboro	10:59am	12:25pm	New Bern	12:52pm
9W	New Bern	10:00am	12W	Goldsboro	10:27am	11:04am	Montgomery	3:56pm
12E(2)	Montgomery	6:00pm	11E	Macon	7:18pm	7:30pm	Norfolk	12:28pm
11E	Montgomery	11:45am	12E	Macon	1:03pm	2:00pm	Savannah	3:13pm
12W	Savannah	12:30pm	11W	Macon	1:43pm	2:38pm	Montgomery	3:56pm
11W(2)	Norfolk	2:15pm	12W(2)	Macon	7:13pm	7:23pm	Montgomery	8:41pm

Connections

State's Proposed Schedules With Existing Schedules

Air-lines	From	Leaves#	Connecting Points	Air-lines	Arrives##	Leaves##	For	Ar-rives#
SAL(1N)	Jacksonville	6:20am	Elkins	AA	12:18pm	12:22pm	New York	2:59pm
SAL(1S)	Morgantown	8:13am	Roanoke	AA	9:52am	10:40am	Los Angeles	4:06pm
SAL(1S)	Morgantown	8:13am	Charlotte	EAL	11:44am	11:50am	Atlanta	1:37pm
SAL(1S)	Morgantown	8:13am	Jacksonville	EAL	2:56pm	3:20pm	Miami	6:20pm
SAL(1S)	Morgantown	8:13am	Jacksonville	EAL	2:56pm	3:45pm	Miami	5:51pm
SAL(1S)	Morgantown	8:13am	Jacksonville	NAL	2:56pm	4:42pm	Tampa	5:52pm
SAL(1S)	Morgantown	6:23pm	Jacksonville	NAL	1:11am	1:30am	Miami	4:15am
NAL	Miami	2:15pm	Jacksonville	SAL(1N)	4:55pm	6:45pm	Morgantown	1:28am
SAL(1S)	Morgantown	6:23pm	Jacksonville	NAL	1:11am	1:30am	New Orleans	4:17am
NAL	New Orleans	11:47am	Jacksonville	SAL(1N)	4:22pm	6:45pm	Morgantown	1:28am
SAL(1S)	Morgantown	6:23pm	Columbia	DAL	11:04pm	12:58am	Atlanta	2:34am
SAL(2E)	Cincinnati	8:45am	Richmond	EAL	1:17pm	3:50pm	New York	6:37pm
SAL(2W)	Norfolk	9:00am	Richmond	EAL	9:35am	9:35am	Atlanta	1:37pm
EAL	Atlanta	4:35pm	Richmond	SAL(2E)	8:14pm	9:37pm	Norfolk	10:12pm
EAL	Atlanta	2:00pm	Richmond	SAL(2W)	6:03pm	7:11pm	Portsmouth	11:03pm
TWA	Detroit	2:00pm	Cincinnati	SAL(2E)	4:25pm	5:00pm	Norfolk	10:12pm
SAL(2W)	Princeton	9:24pm	Cincinnati	AA	11:43pm	1:08am	Memphis	3:55pm
DAL	Atlanta	2:10pm	Cincinnati	SAL(2E)	4:50pm	5:00pm	Princeton	6:57pm
EAL	Chicago	12:30pm	Louisville	SAL(3E)	3:42pm	6:54pm	Wilmington	11:33pm
SAL(3W)	Wilmington	8:15am	Louisville	EAL	12:54pm	1:05pm	St. Louis	2:09pm
AA	Los Angeles	2:25pm	Knoxville	SAL(3E)	8:13am	9:53am	Wilmington	1:09pm
DAL	Cincinnati	6:00pm	Knoxville	SAL(3E)	7:30pm	8:12pm	Wilmington	11:33pm
SAL(3W)	Asheville	10:58am	Knoxville	DAL	11:36am	12:19pm	Atlanta	1:20pm
SAL(3W)	Wilmington	8:15am	Knoxville	PCA	11:36am	12:35pm	Birmingham	8:23pm
PCA	Birmingham	7:00am	Knoxville	SAL(3W)	9:38am	9:53am	Wilmington	1:09pm
SAL(3W)	Wilmington	8:15am	Charlotte	EAL	9:55am	11:50am	Atlanta	1:37pm
EAL	Atlanta	6:20pm	Charlotte	SAL(3E)	8:05pm	9:53pm	Wilmington	11:33pm
EAL	New York	3:00pm	Charlotte	SAL(3W)	7:47pm	9:15pm	Asheville	9:53pm
SAL(4S)	Roanoke	1:30pm	Raleigh	PCA*	2:32pm	3:08pm	Norfolk	4:21pm
SAL(4S)	Roanoke	1:30pm	Raleigh	EAL	2:32pm	3:55pm	Atlanta	6:43pm
SAL(5W)	Norfolk	4:00pm	Louisville	AA	7:41pm	8:53pm	Memphis	10:48pm
AA	Memphis	5:12am	Louisville	SAL(5E)	8:55am	11:00am	Norfolk	3:41pm
SAL(5E)	Norfolk	4:00pm	Richmond	EAL	4.35am	5:40pm	New Orleans	12:35am
SAL(6N)	Jacksonville	6:30am	Huntington	AA	11:34am	11:54am	Chicago	2:06pm
SAL(6N)	Jacksonville	6:30am	Tri-City	PCA	10:30am	10:41am	Pittsburgh	1:12pm
PCA	Pittsburgh	4:00pm	Tri-City	SAL(6S)	6:30pm	8:24pm	Jacksonville	12:24am
SAL(6S)	Portsmouth	9:23am	Tri-City	PCA	10:44am	11:40am	Birmingham	1:43pm
PCA	Birmingham	7:00am	Tri-City	SAL(6N)	10:31am	10:40am	Portsmouth	12:01pm
SAL(6S)	Portsmouth	9:23am	Greenville	EAL	11:52am	12:35pm	Atlanta	1:37pm
SAL(6S)	Portsmouth	9:23am	Jacksonville	EAL	2:54pm	3:20pm	Miami	6:20pm
SAL(6S)	Portsmouth	9:23am	Jacksonville	EAL	2:54pm	3:45pm	Miami	5:51pm
SAL(6S)	Portsmouth	9:23am	Jacksonville	NAL	2:54pm	4:42pm	Tampa	5:52pm
SAL(6S)	Portsmouth	6:53pm	Jacksonville	NAL	12:24am	1:30am	Miami	4:15am
NAL	Miami	2:15pm	Jacksonville	SAL(6N)	4.55pm	5:30pm	Portsmouth	11:01pm
SAL(6S)	Portsmouth	9:23am	Jacksonville	NAL	2:54pm	4:45pm	New Orleans	7:20pm
NAL	New Orleans	11:47am	Jacksonville	SAL(6N)	4:22pm	5:30pm	Portsmouth	11:01pm
SAL(7W)	Wilmington	10:55am	Louisville	EAL	3:54pm	4:45pm	Chicago	5:39pm
EAL	Chicago	12:30pm	Louisville	SAL(7E)	3:42pm	4:00pm	Wilmington	8:54pm
SAL(7E)	Louisville	10:30am	Greensboro	PCA*	1:27pm	2:33pm	Norfolk	4:21pm
SAL(8W)	Charleston	7:55am	Cincinnati	AA	12:22pm	12:55pm	Chicago	2:06pm
SAL(8W)	Charleston	7:55am	Cincinnati	TWA	12:22pm	1:05pm	St. Louis	2:20pm
SAL(8W)	Charleston	7:55am	Tri-City	PCA	10:35am	10:41am	Pittsburgh	1:12pm
EAL	Winston-Salem	11:00am	Charlotte	SAL(8E)	11:37am	11:52am	Charleston	1:17pm
SAL(8E)	Cincinnati	8:50am	Charleston	EAL	1:17pm	2:05pm	Miami	5:51pm
EAL	New York	7:30am	Raleigh	SAL(9E)	11:23am	11:54am	New Bern	12:52pm
SAL(9W)	New Bern	3:30pm	Raleigh	EAL	4:28pm	5:05pm	New York	8:39pm
SAL(9W)	New Bern	10:00am	Raleigh	EAL	10:58am	11:36am	Miami	6:20pm
EAL	Atlanta	2:00pm	Raleigh	SAL(9E)	4:55pm	6:54pm	New Bern	7:52pm
SAL(9E)	Chattanooga	3:30pm	Charlotte	EAL	5:42pm	6:15pm	New York	10:49pm
EAL	New York	7:00am	Charlotte	SAL(9W)	11:37am	12:10pm	Chattanooga	2:22pm
EAL	New York	12:30pm	Charlotte	SAL(9W)	4:50pm	5:40pm	Chattanooga	7:52pm

Terminal times according to time tables.
* December 1941 schedules

Connecting times changed to EWT.

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Connections

State's Proposed Schedules with Existing schedules

Air-lines	From	Leaves#	Connecting Points	Air-lines	Arrives##	Leaves##	For	Ar-rives#
SAL(10W)	Jacksonville	9:15am	Louisville	EAL	3:04pm	3:45pm	Chicago	5:39pm
SAL(11E)	Montgomery	11:45am	Norfolk	PCA	6:11pm	6:30pm	Washington	7:35pm
PCA	Washington	7:30am	Norfolk	SAL(11W)	8:35am	9:30am	Montgomery	3:56pm
PCA	Washington	12;55pm	Norfolk	SAL(11W)	2:00pm	2:15pm	Macon	7:13pm
SAL(11E)	Macon	7:30pm	Columbia	DAL	8:48pm	10:59pm	Charleston	11:39pm
DAL	Charleston	10:55am	Columbia	SAL(11W)	11:35am	1:10pm	Montgomery	3:56pm

* December 1941 schedules
\# Terminal times according to time tables
\#\# Connecting times changed to EWT

Sources: American Aviation Traffic Guide, March 1945. Official Aviation Guide, Dec. 1941. State's proposed schedules.

PLANE UTILIZATION
SHOWING LAYOVER TIMES AT TERMINAL POINTS AND DAILY FLYING TIME

Plane Number	Route Number	Point of Departure	Layover Terminal	Layover Time	Route Number	Destination	Night Layover Time	Next Day Route Number	Daily Flying Time
1	1S	Morgantown	Jacksonville	3:49	1N(2)	Morgantown	6:45	1S	10:46
2	1N	Jacksonville	Morgantown	5:20	1S(2)	Jacksonville	5:19	6N	10:46
3	2E	Cincinnati	Norfolk	:18	1W(2)				
			Macon	:17	11E(2)	Norfolk	8:32	2W	12:43
4	11E	Montgomery	Norfolk	:20	2W(2)	Cincinnati	9:07	8E	9:43
5	2W	Norfolk	Cincinnati	2:48	2E(2)	Norfolk	11:18	1W	8:34
6	1W	Norfolk	Montgomery	2:04	12E(2)	Savannah	15:49	12W	7:47
7	12W	Savannah	Macon	:17	12E				
			Savannah	2:47	12W(2)	Montgomery	15:04	11E	4:37
8	3E	Louisville	Wilmington	6:11	3W(2)	Louisville	10:31	7E	7:58
9	3W	Wilmington	Louisville	6:00	3E(2)	Wilmington	11:12	7W	7:58
10	4N	Wilmington	Roanoke	:14	4S				
			Raleigh	:23	4N(2)				
			Roanoke	:28	4S(2)	Wilmington	16:34	3W	5:46
11	5E	Louisville	Norfolk	:19	5W	Louisville	12:49	3E	8:02
12	6S	Portsmouth	Jacksonville	2:36	6N(2)	Portsmouth	10:22	6S	9:22
13	6N	Jacksonville	Portsmouth	6:52	6S(2)	Jacksonville	3:04	1N	9:22
14	7E	Louisville	Raleigh	2:45	7W(2)	Louisville	14:15	5E	6:20
15	7W	Wilmington	Louisville	:06	7E(2)	Wilmington	14:16	4N	8:18
16	8E	Cincinnati	Charleston	3:43	8W(2)	Cincinnati	11:18	2E	7:34
17	8W	Charleston	Cincinnati	2:23	8E(2)	Charleston	12:43	8W	7:34
18	9E	Chattanooga	NewBern	2:38	9W(2)	Chattanooga	12:33	9E	7:24
19	9W	New Bern	Chattanooga	2:38	9E(2)	New Bern	12:38	9W	7:24
20	10W	Jacksonville	Louisville	:26	10E	Jacksonville	11:56	10W	9:56

TOTAL FLYING TIME 167:56

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EXHIBIT SHOWING PROPOSED ROUTE & SCHEDULED MILEAGE AND TIME

This exhibit shows the mileage for the various routes, and the daily monthly and annual scheduled miles and flight time for the routes with an estimated operating performance of 90% completed schedules. The mileage figures used are the total distances from airport to airport, and the hours express the actual flight time from block to block between the scheduled stops.

It is estimated that 100 hours per month will be utilized in test, ferrying, and pilot training.

It is also estimated that 30 hours per crew will be required for qualifying the personnel for the equipment and routes. In order to provide for sufficient personnel to operate on the basis of 90% completed schedules and not exceed 85 hours per month per pilot, 54 Pilot crews will be required.

SCHEDULED MILEAGE AND FLIGHT HOURS

Routes	No. Round Trips Daily	Route Miles	Flying Time	Daily Miles	Daily Hours	Monthly# Miles	Monthly# Hours	Annually # # Miles	Annually # # Hours
1	2	686	5:23	2,744	21:32	82,320	646	987,840	7,752
2	2	541	4:17	2,164	17:08	64,920	514	779,040	6,168
3	2	566	3:59	2,264	15:56	67,920	478	815,040	5,736
4	2a	252	1:56	748	5:46	22,440	173	269,280	2,076
5	1	553	4:01	1,106	8:02	33,180	241	398,160	2,892
6	2	635	4:41	2,540	18:44	76,200	562	914,400	6,744
7	2b	564	4:09	1,996	14:38	59,880	439	718,560	5,268
8	2	522	3:47	2,088	15:08	62,640	454	751,680	5,448
9	2	501	3:42	2,004	14:48	60,120	444	721,440	5,328
10	1	678	4:59	1,356	9:58	40,680	299	488,160	3,589
11	2c	717	5:26	2,524	19:18	75,720	579	908,640	6,948
12	2d	325	2:21	956	6:58	28,680	209	344,160	2,508
TOTALS		6,540*		22,490	167:56	674,700	5,038	8,096,400	60,456
90% Completed Schedules						607,230	4,535	7,286,760	54,411
Test, Ferry, and Training						15,000	100	180,000	1,200

One of the two round trips shown above operates only between the following points:

a - Roanoke - Raleigh 122 Miles :57 Flying Time
b - Louisville - Raleigh 434 Miles 3:10 Flying Time
c - Norfolk - Macon 545 Miles 4:13 Flying Time
d - Savannah - Macon 153 Miles 1:08 Flying Time

* With no self-duplications: 4,864 # 30 Times Daily Totals # # 12 Times Monthly Totals

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Exhibit STA-38 [R. 9537]

EXHIBIT SHOWING CAPITAL EXPENDITURES

This exhibit shows the estimated capital expenditure for flying and ground equipment, furniture, fixtures, office supplies, miscellaneous equipment and supplies, and initial development expenses.

Aircraft costs shown are for 24 passenger DC3's which may be purchased from the Defense Plant Corp. It is anticipated that these planes may be available on a lease basis pending the availability of new and more efficient planes now under development.

A later exhibit provides comparative figures on other smaller aircraft in conjunction with cost breakdowns on combinations of less than the total number of twelve routes.

CAPITAL EQUIPMENT—FLYING EQUIPMENT

25	Airplanes @ $70,000.00	$1,750,000.00
60	Engines @ $12,500.00	750,000.00
60	Propellers @ $2,500.00	150,000.00
	Miscellaneous Spare Parts (Engine, Aircraft, & Accessory)	150,000.00
25	Two-way H. F. Radio Communications Units @ $1,200.00	30,000.00
25	Radio Range Receivers @ $250.00	6,250.00
25	Automatic Direction Finders @ $1,800.00	45,000.00
25	V. H. F. Marker Receivers @ $250.00	6,250.00
6	Complete Spare Aircraft Radio Installations @ $3,500.00	21,000.00
	TOTAL	$2,908,500.00

[R. 9538]

ESTIMATED CAPITAL EXPENDITURE—GROUND EQUIPMENT

1 Communications Stations—1KW (Wilcox Type 96C) Charlotte, N. C.	$20,000.00
6 Communications Stations—400 Watts @ $6,000.00	36,000.00

Charleston, W Va.
Cincinnati
Jacksonville
Montgomery
Norfolk
Roanoke

48 Communications Stations—50 Watts @ $3,500.00 — $168,000.00

Anderson	Fayetteville	Orangeburg
Asheville	Florence	Petersburg
Augusta	Goldsboro	Pinehurst
Beckley	Greensboro	Portsmouth
Brunswick	Greenville, N. C.	Princeton
Burlington	Greenville, S. C.	Raleigh
Charleston, S. C.	Greenwood	Richmond
Chattanooga	Hickory	Rock Hill
Clarksburg	Huntington	Salisbury
Columbia	Knoxville	Savannah
Columbus, Ga.	Lexington	Spartanburg
Covington	Louisville	Sumter
Danville	Lynchburg	Tri-City
Dublin	Macon	Waycross
Elizabeth City	Morgantown	Wilmington
Elkins	New Bern	Winston-Salem

Miscellaneous Hangar, Station, and Ramp Equipment	100,000.00
Furniture, Fixtures, and Office Equipment	60,000.00
Spare Radio Equipment and Parts	30,000.00
TOTAL	414,000.00

SUMMARY OF ESTIMATED CAPITAL EXPENDITURES AND INITIAL DEVELOPMENT EXPENSE

Aircraft Complete with Spare Parts	2,908,500.00
Ground Equipment	414,000.00
Initial Expense for Development and Inauguration of Routes	100,000.00
TOTAL	3,422,500.00

Exhibit STA-39 [R. 9539]

EXHIBIT SHOWING ESTIMATED GASOLINE, OIL AND INSURANCE EXPENSES

This exhibit shows the gasoline, oil, gasoline and oil taxes, and the insurance expenses relative to the proposed operations.

Gasoline consumption is estimated at 90 gallons per hour at 12 cents per gallon. Federal gasoline tax of 1.5 cents per gallon to be added.

Oil consumption is figured at 1.7 gallons per hour and the cost at 40 cents per gallon, plus 4.5 cents per gallon Federal tax.

Crash and Hull Insurance is estimated at 6% of the valuation of the equipment, $2,587,500.00.

Public Liability Insurance is estimated at $.0015 per mile.

FUEL

	Monthly	Annually
Consumption @ 90 gal. per hour	417,150 gals.	5,005,800 gals.
Cost @ 12¢ per gal.	$ 50,058.00	$ 600,696.00
Taxes @ 1.5¢ per gal.	6,257.00	75,084.00

OIL

Consumption @ 1.7 gal. per hour	7,880 gals.	94,560 gals.
Cost @ 40¢ per gal.	$ 3,152.00	$ 37,824.00
Taxes @ 4.5¢ per gal.	355.00	4,260.00

INSURANCE

Crash & Hull Insurance @ 6%	$ 12,937.50	$ 155,250.00
Public Liability @ $.0015 per mile	933.00	11,196.00

Exhibit STA-40 [R. 9540]

EXHIBIT SHOWING ESTIMATED CREW EXPENSES

The monthly scheduled mileage at 90% completed operation amounts to 607,230 miles requiring 4,535 flight hours. Scheduling each pilot 85 hours per month, 54 Captains and 54 First Officers will be required. In order to give vacations to 54 Captains, it will be necessary to employ 2.16 additional Captain personnel. The fractional part of a Captain may be obtained from a member of the First Officer personnel who holds the necessary qualifications for captaincy, thus making it necessary to employ 3 additional First Officers for vacation work.

A steward will comprise the third member of each crew and will be scheduled for 100 flight hours each month. Thus, 46 stewards will be required plus 2 more for vacation work.

Captains' pay is based on present airline contracts with the Airline Pilots' Association.

First Officers' pay is based on $200.00 per month.

Stewards' pay is based on $120.00 per month.

Crew expense is based on the current rate of $.004 per mile.

Compensation Insurance is based on the present rate of 3.5% of crew salaries.

	Month
Captain's Base Pay	$133.33
Captain's Hourly Pay (Day)	240.35
Captain's Hourly Pay (Night)	218.83
Captain's Mileage Pay (11,245 mi./mo.)	75.59
Total Captain's Monthly Pay	$668.10
First Officer's Monthly Pay	$200.00
Flight Steward's Monthly Pay	$120.00

	Month	Year
54 Captains	$36,077.40	$432,929.00
54 First Officers	10,800.00	129,600.00
46 Stewards	5,520.00	66,240.00
Vacations for Captains	1,080.00	12,960.00
Vacations for First Officers	600.00	7,200.00
Vacations for Stewards	240.00	2,880.00
TOTAL CREW EXPENSE	$54,317.40	$651,809.00
Flight Crew Expense @ .004¢ per mile		29,147.00
Compensation Insurance @ 3.5%		22,803.00
TOTAL CREW EXPENSES		$703,759.00

Exhibit STA-41 [R. 9541]

EXHIBIT SHOWING SUMMARY OF FLYING OPERATIONS EXPENSE

This exhibit is a summary of the flying operations expense. The estimate of flying operations expense per revenue mile is $ .218

	Annual Expense
Flight Crew Salaries	$ 651,809.00
Flight Crew Expenses	29,147.00
Gasoline	600,696.00
Gasoline Taxes	75,084.00
Oil	37,824.00
Oil Taxes	4,260.00
Crash & Hull Insurance	155,250.00
Public Liability Insurance	11,196.00
Compensation Insurance	22,803.00
TOTAL	$1,588,069.00

Expense per Revenue Mile ..... $ .218

Exhibit STA-42 [R. 9542]

EXHIBITS SHOWING ESTIMATE OF FLIGHT EQUIPMENT MAINTENANCE—DIRECT EXPENSE

This exhibit shows the direct expense of maintenance and overhaul of flight equipment. Aircraft are to be overhauled by outside contract at the end of 6000 hours of flight. 20 aircraft are planned for the operation of schedules and it is contemplated that 55,611 hours will be flown each year. There will, therefore, be 9.3 aircraft overhauls per year. It is estimated that each overhaul will cost approximately $10,000.

It is contemplated that engine overhaul will be accomplished by outside contract at the end of 750 hours of flight. 111,222 engine hours will be flown each year, requiring 148.3 engine overhauls per year. It is estimated that each engine overhaul will cost $1,200.

Other expense for maintenance and overhaul is based on present approximate industry averages.

	Annual Expense
Aircraft Repairs—Direct Labor	$ 60,000.00
Aircraft Repairs—Materials & Supplies	60,000.00
Aircraft Repairs—Outside Repairs	93,000.00
Engine Repairs—Direct Labor	60,000.00
Engine Repairs—Materials & Supplies	60,000.00
Engine Repairs—Outside Repairs	177,960.00
Instrument, Propeller, and Radio Repairs, including materials, supplies, and direct labor.	60,000.00
TOTAL	$570,960.00

COST per Revenue Mile ..... $ .078

Exhibit STA-43 [R. 9543]

EXHIBIT SHOWING DEPRECIATION—FLIGHT EQUIPMENT

This exhibit shows depreciation expense of aircraft, engines, propellers, and flight radio equipment.

The estimated cost of the aircraft, complete with engines, propellers, and radio equipment is $103,500.00.

Depreciation is estimated on a basis of five years with a 20% residual value.

	Annual Expense
Aircraft—25 @ $70,000.00	$280,000.00
Aircraft Engines—60 @ $12,500.00	120,000.00
Aircraft Propellers—60 @ $2,500.00	24,000.00
Aircraft Radio Equipment—31 @ $3,500.00	17,360.00
Spare Parts & Assemblies	24,000.00
TOTAL	$465,360.00

Expense per Revenue Mile ..... $ .064

Exhibit STA-44 [R. 9544]

EXHIBIT SHOWING ESTIMATED GROUND OPERATIONS EXPENSE

This exhibit shows the estimated expense required at the various stations:

Charlotte, N. C. is shown as the main operations base which will control all dispatching and ship routing. Such maintenance as 100 hour checks, engine changes, major and minor repairs, etc., will be accomplished at this base. It is contemplated that overhaul of engines, aircraft, and accessories will be subcontracted.

Personnel and expenses for the 10 principal terminal stations, 14 connecting stations, and 30 intermediate stations are shown.

Airplanes will remain overnight at terminal stations and receive, before each departure, the required maintenance check. Overnight layovers will occur at one connecting and one intermediate station. Mechanics are provided for these points and other points where more than one schedule lays over.

Connecting stations are the principal stops where connections will be made for service to various points on State Airlines or on flights of other carriers.

Intermediate stations are stops on State Airlines that are not served by any other carrier, or that are not principal connecting points.

All operations and maintenance activities at Charlotte, N. C. are based on 24 hour daily coverage.

At such stations where activity demands, it is contemplated that additional personnel will be obtained by subcontracts.

Terminal Stations	Connecting Stations
Charleston, S. C.	Asheville
Chattanooga	Augusta
Cincinnati	Bristol (Tri City)
Jacksonville	Columbia
Louisville	Fayetteville
Montgomery	Greensboro
Morgantown	Greenville, S. C.
New Bern	Knoxville
Norfolk	Lexington, Ky.
Wilmington	Macon
	Raleigh-Durham
	Richmond
	Roanoke
	Savannah

[R. 9545]

ESTIMATE OF GROUND OPERATIONS EXPENSE PERSONNEL AT STATIONS OTHER THAN MAIN BASE

			Total Annual Expense per Station	Total
10 Terminal Stations				
1	Station Manager		$2,400.00	
3	Station Agents	@ $1,440.00	4,320.00	
2	Mechanics	@ 1,800.00	3,600.00	
1	Service Employee		1,200.00	
	Rent, Heat, Light, Telephone and Insurance		3,180.00	
7	Total per Station		$14,700.00	
70	Total per 10 Stations			$147,000.00
14 Connecting Stations				
1	Station Manager		$ 1,800.00	
3	Station Agents	@ $1,440.00	4,320.00	
	Rent, Heat, Light Telephone and Insurance		6,685.00	
4	Total per Station		12,805.00	
56	Total per 14 connecting Stations			179,270.00
30 Intermediate Stations				
1	Station Manager		$ 1,800.00	
2	Station Agents	@ $1,440.00	2,880.00	
	Rent, Heat, Light, Telephone and Insurance		3,900.00	
3	Total per Station		$ 8,580.00	
90	Total per 30 Intermediate Stations			257,400.00
	TOTAL			$583,670.00

[R. 9546]

SUMMARY OF ESTIMATED GROUND OPERATIONS EXPENSE

Main Base (Charlotte, N. C.)

	Annual Expense	Total
Rent for Hangar & Office (inc. Insurance)	$18,000.00	
Heat, Light, Power, and Telephone	6,000.00	
1 Supt. of Operations	8,000.00	
1 Supervisor of Ground Operations	5,000.00	
1 Supervisor of Flight Operations	7,500.00	
1 Asst. Supervisor of Flight Operations	7,200.00	
1 Supt. of Communications	6,000.00	
1 Chief Dispatcher	3,600.00	
4 Dispatchers	12,000.00	
3 Asst. Dispatchers	5,400.00	
1 Chief Meteorologist	3,000.00	
3 Meteorologists	7,200.00	
1 Chief Radio Operator	3,000.00	
3 Radio Operators	4,320.00	
6 Radio Technicians	10,800.00	
14 Service Employees	20,160.00	
14 Passenger Agents	20,160.00	
Clerical and Miscellaneous Personnel	18,000.00	
Miscellaneous Expenses, Supplies, Travel Incidentals, etc.	60,000.00	$225,340.00

Other Terminals, Connecting & Intermediate Stations

Station Managers	$103,200.00	
Station Agents	190,080.00	
Mechanics	36,000.00	
22 Extra Machanics for Certain Stations	39,600.00	
Service Employees	12,000.00	
Rent, Heat, Light, Telephone & Insurance	242,390.00	
Miscellaneous Expenses	75,000.00	$698,670.00
TOTAL		$924,010.00

Expense per Revenue Miles — $ .127

Exhibit STA-45 [R. 9547]

EXHIBIT SHOWING
GROUND EQUIPMENT MAINTENANCE—DIRECT

Ground equipment maintenance direct costs are estimated at $ .010 per revenue mile, or approximately $73,000 per annum.

Exhibit STA-46 [R. 9548]

EXHIBIT SHOWING ESTIMATED EXPENSES MAINTENANCE—INDIRECT

		Annual Expense
1	Superintendent Maintenance & Engineering	$ 7,200.00
4	Asst. Superintendents Maintenance	24,000.00
1	Engineer	4,800.00
4	Asst. Engineers	9,600.00
4	Maintenance Foreman	14,400.00
4	Inspectors	13,200.00
	Other Equipment Maintenance Employees	12,000.00
10	Stockroom Employees	15,600.00
	Miscellaneous Clerical & Maintenance Personnel	18,000.00
	Rent of Buildings and Offices	75,000.00
	Miscellaneous Maintenance Expenses	60,000.00
	TOTAL	$253,800.00

Expense per Revenue Mile - - - $ .035

Exhibit STA-47 [R. 9549]

EXHIBIT SHOWING ESTIMATED PASSENGER SERVICE EXPENSES

This exhibit shows the estimated expenses for passenger service.

In order to prevent ground delays and accommodate passengers on flights which require in some cases over seven hours, food service is contemplated aboard aircraft whenever necessary, by contract with suitable catering services. It is anticipated that the passenger will be charged for food as soon as practicable.

	Annual Expense
1 Superintendent	$ 4,800.00
Miscellaneous Clerical & Passenger Service Employees	5,760.00
Food Expense	70,000.00
Passenger Liability Insurance	70,000.00
Miscellaneous Expenses for Passenger Service	60,000.00
TOTAL	$ 210,560.00

Expense for Revenue Mile - - - $ .029

Note: Flight stewards, who will have several combination duties, are not included in passenger Service expense, but listed as flight crew expense.

Exhibit STA-48 [R. 9550]

EXHIBIT SHOWING ESTIMATED EXPENSES FOR TRAFFIC & SALES

		Annual Expense
1	General Traffic & Sales Manager	$ 7,200.00
1	Asst. General Traffic Manager	4,800.00
10	District Traffic Managers @ $3,600.00	36,000.00
20	Sales Agents @ $1,800.00	36,000.00
1	Reservation Manager	3,000.00
14	Reservations Agents @ $1,440	20,160.00
	Telephone & Telegraph and other Communications Expense	260,000.00
	Miscellaneous Traffic & Sales Expense	60,000.00
	TOTAL	$427,160.00

Expense per Revenue Mile - - - $ .059

Exhibit STA 49 [R. 9551]

EXHIBIT SHOWING ESTIMATED ADVERTISING & PUBLICITY EXPENSE

		Annual Expense
1	Director of Publicity & Advertising	$ 7,200.00
10	Advertising & Publicity Agents @ $1,800.00	18,000.00
	Travel and Incidental Expenses	24,000.00
	Newspaper and Other Advertising	60,000.00
	Misc. Publicity & Advertising Expense	20,000.00
	TOTAL	$129,200.00

Expense per Revenue Mile.....$ .018

Exhibit STA-50 [R. 9552]

EXHIBIT SHOWING ESTIMATED GENERAL AND ADMINISTRATIVE EXPENSE

		Annual Expense
1	President	$ 15,000.00
1	Executive Vice President	12,000.00
1	Operating Vice President	10,000.00
1	Vice President-Treasurer	10,000.00
1	Purchasing Agent	6,000.00
100	General Office Employees	150,000.00
	Telephone and Telegraph	24,000.00
	Miscellaneous Administrative and General Expenses	60,000.00
	TOTAL	$287,000.00

Expense per Revenue Mile.....$ .039

Exhibit STA-51 [R. 9553]

EXHIBIT SHOWING ESTIMATED DEPRECIATION OF GROUND EQUIPMENT

This exhibit shows the annual and per mile depreciation expense of radio communications equipment, miscellaneous hangar, station, and ramp equipment, furniture, fixtures, and office equipment, spare radio equipment, and parts, based on a five year depreciation schedule without residual value.

	Annual Expense
55 Ground Radio Communications Units	$44,800.00
Miscellaneous Hangar, Station, and Ramp Equipment	20,000.00
Furniture, Fixtures, and Office Equipment	4,000.00
Spare Radio Equipment and Parts	6,000.00
TOTAL	$74,800.00

Expense per Revenue Mile.....$ .010

Exhibit STA-52 (R. 9554) consists of one page entitled *Exhibit Showing Summary of Operating Expenses* and includes the total figures in summary form taken from each of the preceding exhibits numbered 39 through 51. This Exhibit is as follows:

[R. 9554]

EXHIBIT SHOWING SUMMARY OF OPERATING EXPENSES

	Annual Expense	Expense per Revenue Mile
Flying Operations	$1,588,069.00	$ .218
Flight Equipment Maintenance	570,960.00	.078
Depreciation Flight Equipment	465,360.00	.064
Ground Operations	924,010.00	.127
Ground Equipment Maintenance	73,000.00	.010
Equipment Maintenance—Indirect	253,800.00	.035
Passenger Service	210,560.00	.029
Traffic & Sales	427,160.00	.059
Advertising & Publicity	129,200.00	.018
General & Administrative	287,000.00	.039
Depreciation—Ground Equipment	74,800.00	.010
TOTAL	$5,003,919.00	$ .687

Exhibit STA-53 (R. 9555-9561) is entitled *Expense Estimates for Selected Route Combinations.* This Exhibit consists of an explanatory note and six pages of figures, page 7 being a summary thereof.

GROUND OPERATIONS EXPENSE

ROUTE COMBINATION NUMBERS		1.		2.		3.		4.		5.
Terminal Stations Expense, inc. Rent, Light, Heat, Personnel, etc. @ $ 20,720.00	(4)	$ 82,880.	(11)	$ 227,920	(4)	$ 82,880.	(5)	$ 103,600.	(7)	$ 145,040.
Connecting Stations Expense, inc. Rent, Light, Heat, Personnel, etc. @ $ 14,920.00	(12)	179,040.	(24)	358,080.	(7)	104,920.	(10)	149,200.	(12)	179,040.
Intermediate Stations Expense, inc. Rent, Light, Heat, Personnel, etc. @ $ 8,520.00	(8)	68,160	(15)	127,800.	(2)	17,040.	(4)	34,080.	(6)	51,120.
Main Base (Charlotte)		125,000.		200,000.		100,000.		125,000.		150,000.
TOTALS		$ 455,080.		$ 913,800.		$ 304,360.		$ 411,880.		$ 525,200.
Plane Revenue Miles		1,706,832 mi.		5,290,272 mi.		1,323,216 mi.		1,681,560 mi.		2,330,856 mi.
Cost Per Revenue Mile		$ .267		$ .173		$ .230		$ .245		$ .225

ROUTE COMBINATION NUMBERS		6.		7.		8.		9.		10.
Terminal Stations Expense, inc. Rent, Light, Heat, Personnel, etc. @ $ 20,720.00	(7)	$ 145,040.	(8)	$ 165,760.	(10)	$ 207,200.	(3)	$ 62,160.	(7)	$ 145,040.
Connecting Stations Expense, inc. Rent, Light, Heat, Personnel, etc. @ $ 14,920.00	(15)	223,800.	(14)	208,880.	(18)	268,560.	(7)	104,440.	(19)	283,480.
Intermediate Stations Expense, inc. Rent, Light, Heat, Personnel, etc. @ $ 8,520.00	(6)	51,120.	(7)	59,640.	(9)	76,680.	(3)	25,560.	(7)	59,640.
Main Base (Charlotte)		175,000.		175,000.		200,000.		100,000.		200,000.
TOTALS		$ 594,960.		$ 609,280.		$ 752,240.		$ 292,160.		$ 688,160.
Plane Revenue Miles		3,064,392 mi.		3,306,744 mi.		4,195,800 mi.		1,059,480 mi.		3,797,928 mi.
Cost Per Revenue Mile		$ .194		$ .184		$ .179		$ .276		$ .181

CAPITAL EXPENDITURE - GROUND EQUIPMENT

ROUTE COMBINATION NUMBERS	1.	2.	3.	4.	5.
Communication Station 1 K.W.	(1) $ 5,000.	(1) $ 5,000.	(1) $ 5,000.	(1) $ 5,000.	(1) $ 5,000.
Comm. Stations 400 Watts	(4) 16,000.	(6) 24,000.	(1) 4,000.	(3) 12,000.	(3) 12,000.
Comm. Stations 50 Watts	(20) 30,000.	(44) 66,000.	(12) 18,000.	(16) 24,000.	(22) 33,000.
Misc. Hangar, Station & Ramp Equipment	31,500.	55,000.	22,000.	27,000.	32,500.
Furniture, Fixtures, & Office Equipment	31,600.	55,000.	22,000.	27,000.	32,500.
Spare Radio Equip. & Parts	15,800.	27,500.	11,000.	13,500.	16,000.
TOTALS	$ 130,000.	$ 232,500.	$ 82,000.	$ 108,500.	$ 131,000.
Depreciation (5 Yrs. - No Res.)	$ 26,000.	$ 46,500.	$ 16,400.	$ 21,700.	$ 26,000.
Plane Revenue Miles	1,706,832 mi.	5,290,272 mi.	1,323,216 mi.	1,681,560 mi.	2,330,856 mi.
Cost Per Revenue Mile	$ .015	$ .009	$ .012	$ .013	$ .011

ROUTE COMBINATION NUMBERS	6.	7.	8.	9.	10.
Communication Station 1 K.W.	(1) $ 5,000.	(1) $ 5,000.	(1) $ 5,000.	(1) $ 5,000.	(1) $ 5,000.
Comm. Stations 400 Watts	(3) 12,000.	(3) 12,000.	(4) 16,000.	(4) 16,000.	(5) 20,000.
Comm. Station 50 Watts	(25) 37,500.	(26) 39,000.	(33) 49,500.	(9) 13,500.	(28) 42,000.
Misc. Hangar, Station & Ramp Equipment	35,200.	36,000.	43,500.	22,000.	40,000.
Furniture, Fixtures, & Office Equipment	35,200.	36,000.	43,500.	22,000.	40,000.
Spare Radio Equip. & Parts	17,600.	18,000.	22,000.	11,000.	20,000.
TOTALS	$ 142,500.	$ 146,000.	$ 179,500.	$ 89,500.	$ 167,000.
Depreciation (5 Yrs. - No. Res.)	$ 28,500.	$ 29,200.	$ 35,900.	$ 17,900.	$ 33,400.
Plane Revenue Miles	3,064,392 mi.	3,306,744 mi.	4,195,800 mi.	1,059,480 mi.	3,797,928 mi.
Cost Per Revenue Mile	$ .009	$ .009	$ .009	$ .017	$ .009

SUMMARY OF OPERATING EXPENSES

ROUTE COMBINATION NUMBERS	1.		2.		3.		4.		5.	
Flying Operations	$ 376,739.	$.221	$ 1,145,226.	$.216	$ 288,551.	$.218	$ 355,241.	$.211	$ 497,057.	$.213
Flight Equip. Maint.	139,400.	.082	418,200.	.079	109,500.	.082	137,100.	.082	189,150.	.081
Depreciation Flight Equip.	92,960.	.055	334,320	.063	92,960.	.070	113,120.	.067	168,560.	.072
Ground Operations	455,080.	.267	913,800.	.173	304,360.	.230	411,880.	.245	525,200.	.225
Ground Equip. Maint.	17,000.	.010	53,000.	.010	13,200.	.010	16,800.	.010	23,300.	.010
Equip. Maint. - Indirect	80,500.	.047	240,800.	.045	60,200.	.045	96,550.	.057	114,200.	.049
Passenger Service	75,300.	.044	193,800.	.037	52,400.	.040	74,300.	.044	97,400.	.042
Traffic & Sales	148,300.	.087	400,160.	.076	103,320.	.078	150,000.	.089	184,000.	.079
Advertising & Publicity	36,100.	.021	120,600.	.023	26,500.	.020	46,800.	.028	51,300.	.022
General & Administrative	141,600.	.083	267,500.	.050	102,400.	.077	136,000.	.081	140,000.	.060
Depreciation - Gr. Equip.	26,000.	.015	46,500.	.009	16,400.	.012	21,700.	.013	26,000.	.011
Total Expense	$ 1,588,979.	$.932	$ 4,133,906.	$.781	$ 1,169,791.	$.882	$ 1,559,491.	$.927	$ 2,016,167.	$.864
90% Scheduled Miles	1,706,832 mi.		5,290,272 mi.		1,323,216 mi.		1,681,560 mi.		2,330,856 mi.	

ROUTE COMBINATION NUMBERS	6.		7.		8.		9.		10.	
Flying Operations	$ 645,070.	$.210	$ 706,379.	$.214	$ 904,801.	$.216	$ 240,384.	$.227	$ 818,253.	$.216
Flight Equip. Maint.	248,000.	.081	264,500.	.080	332,050.	.079	84,700.	.080	296,450.	.078
Depreciation Flight Equip.	206,080.	.067	244,160.	.074	278,880.	.066	75,600.	.072	261,520.	.069
Ground Operations	594,960.	.194	609,280.	.184	752,240.	.179	292,160.	.276	688,160.	.181
Ground Equip. Maint.	30,600.	.010	33,000.	.010	42,000.	.010	10,600.	.010	38,000.	.010
Equip. Maint. - Indirect	164,400.	.054	166,200.	.050	183,100.	.044	49,800.	.047	175,200.	.046
Passenger Service	128,000.	.042	130,800.	.040	156,000.	.037	41,300.	.039	144,200.	.038
Traffic & Sales	277,600.	.090	281,900.	.085	321,900.	.077	90,000.	.085	303,400.	.080
Advertising & Publicity	82,650.	.027	84,000.	.025	97,000.	.023	26,500.	.025	90,900.	.024
General & Administrative	190,250	.062	193,400.	.058	222,900.	.053	70,600.	.067	209,000.	.055
Depreciation - Gr. Equip.	28,500.	.009	29,200.	.009	35,900.	.009	17,900.	.017	33,400.	.009
Total Expense	$ 2,596,110.	$.846	$ 2,742,919.	$.829	$ 3,326,771.	$.793	$ 999,544.	$.945	$ 3,058,483.	$.806
90% Scheduled Miles	3,064,392 mi.		3,306,744 mi.		4,195,800 mi.		1,059,480 mi.		3,797,928 mi.	

Exhibit STA-54 (R. 9562-9566) is entitled *Exhibit Showing Operating Expense Estimates for two Selected Route Combinations Using Lockheed Lodestars.* This Exhibit shows detailed figures of operating cost with the smaller 14 passenger Lockheed Lodestar plane as compared with the 24 passenger DC-3 plane covered by the other exhibits. The explanatory page and the summary alone is printed.

[R. 9562]

EXHIBIT SHOWING OPERATING EXPENSE ESTIMATES FOR TWO SELECTED ROUTE COMBINATIONS USING LOCKHEED LODESTARS

Two selected route combinations, namely, Route Combination No. 2 and No. 6, have been used in this exhibit to demonstrate what economies are possible by the use of Lodestar equipment in place of Douglas equipment.

In addition to the finite economies set forth in this exhibit, it must be remembered that since a Lockheed Lodestar is a faster airplane than a DC-3, it is possible that the same route mileage might be operated with one or more aircraft less, particularly where considerable route mileage is involved such as in route combination No. 6.

In order to have a basis for working out these figures which would give a direct comparison to the same route combinations using DC-3 equipment, no change was made in the schedule. However, in actual practice, the entire schedule pattern would have to be re-worked to take into account the differential in speed between the two types of equipment.

Route Combination No.	Route Numbers
2.	3, 7
6.	2, 3, 4, 5, 7, 8

CAPITAL EXPENDITURE - GROUND EQUIPMENT
(Lockheed Lodestar)

ROUTE COMBINATION NUMBERS		1.		10.
Communication Station 1 K.W.	(1)	$ 5,000.	(1)	$ 5,000.
Communication Stations 400 Watts	(4)	16,000.	(5)	20,000.
Communication Stations 50 Watts	(20)	30,000.	(28)	42,000.
Misc. Hangar, Station & Ramp Equipment		31,600.		40,000.
Furniture, Fixtures, & Office Equipment		31,600.		40,000.
Spare Radio Equip. & Parts		15,800.		20,000.
TOTALS		$ 130,000.		$ 167,000.
Depreciation (5 Years - No Res.)		$ 26,000.		$ 33,400.
Plane Revenue Miles		1,706,832 mi.		3,797,928 mi.
Cost Per Revenue Mile		$ .015		$ .009

SUMMARY OF OPERATING EXPENSES
(Lockheed Lodestar)

ROUTE COMBINATION NUMBERS	1.		10.	
Flying Operations	$ 321,116.	$ .188	$ 684,060.	$ .180
Flight Equipment Maintenance	115,910.	.068	248,540.	.066
Depreciation Flight Equipment	76,960.	.045	216,720.	.057
Ground Operations	432,040.	.253	650,720.	.172
Ground Equipment Maintenance	17,000.	.010	38,000.	.010
Equipment Maint. - Indirect	80,500	.047	175,200.	.046
Passenger Service	65,000.	.038	120,000.	.032
Traffic & Sales	148,300.	.087	303,400.	.080
Advertising & Publicity	36,100.	.021	90,900.	.024
General & Administrative	141,600.	.083	209,000.	.055
Depreciation - Ground Equip.	26,000.	.015	33,400.	.009
Total Expense	$ 1,460,526.	$ .855	$ 2,769,940.	$ .731
90% Scheduled Miles	1,706,832 mi.		3,797,928 mi.	

Exhibit STA-55 (R. 9567-9570 is entitled *Exhibit Showing Operating Expense Estimates for Two Selected Route Combinations Eliminating Stewards and Food Service.* This Exhibit contains four pages and contains detailed analysis similar to that in the foregoing exhibits.

CAPITAL EXPENDITURE - GROUND EQUIPMENT
(Eliminating Food and Stewards)

ROUTE COMBINATION NUMBERS	1.	10.
Communication Station 1 K. W.	(1) $ 5,000.	(1) $ 5,000.
Comm. Stations 400 Watts	(4) 16,000.	(5) 20,000.
Comm. Stations 50 Watts	(20) 30,000.	(28) 42,000.
Misc. Hangar, Station & Ramp Equipment	31,600.	40,000.
Furniture, Fixtures, & Office Equipment	31,600.	40,000.
Spare Radio Equip. & Parts	15,800.	20,000.
TOTALS	$ 130,000.	$ 167,000.
Depreciation (5 Yrs. - No. Res.)	$ 26,000.	$ 33,400.
Plane Revenue Miles	1,706,832 mi.	3,797,928 mi.
Cost Per Revenue Mile	$ .015	$ .009

SUMMARY OF OPERATING EXPENSES
(Eliminating Food and Stewards)

ROUTE COMBINATION NUMBERS	1.		10.	
Flying Operations	$ 358,854.	$ .211	$ 781,093	$ .206
Flight Equipment Maint.	139,400.	.082	296,450.	.078
Depreciation Flight Equip.	92,960	.055	261,520.	.069
Ground Operations	455,080.	.267	688,160.	.181
Ground Equip. Maint.	17,000.	.010	38,000.	.010
Equip. Maint. - Indirect	80,500.	.047	175,200.	.046
Passenger Service	26,000.	.015	57,000.	.015
Traffic & Sales	148,300.	.087	303,400.	.080
Advertising & Publicity	36,100.	.021	90,900.	.024
General & Administrative	141,600.	.083	209,000.	.055
Depreciation - Gr. Equipment	26,000.	.015	33,400.	.009
TOTAL EXPENSE	$ 1,521,794.	$ .893	$ 2,934,123.	$ .773
90% Scheduled Miles	1,706,832 mi.		3,797,928 mi.	

Exhibit STA-56 (R. 9571-9574) is entitled *Exhibit Showing Operating Expense Estimates for two Selected Route Combinations Writing Off Equipment in Three Years With No Residual Value.* This Exhibit contains operating expense estimates similar to those in the foregoing exhibits except that depreciation is figured on on a three-year basis instead of on a five-year basis with a residual value of 20%.

R. 9574

CAPITAL EXPENDITURE - GROUND EQUIPMENT

(Depreciation: 3 Yrs. - No Res.)

ROUTE COMBINATION NUMBERS	1.	10.
Communication Station 1 K.W.	(1) $ 5,000.	(1) $ 5,000.
Comm. Stations 400 Watts	(4) 16,000.	(5) 20,000.
Comm. Stations 50 Watts	(20) 30,000.	(28) 42,000.
Misc. Hangar, Station & Ramp Equipment	31,600.	40,000.
Furniture, Fixtures, & Office Equipment	31,600.	40,000.
Spare Radio Equip. & Parts	15,800.	20,000.
TOTALS	$ 130,000.	$ 167,000.
Depreciation (3 Yrs. - No Res.)	$ 43,333.	$ 55,667.
Plane Revenue Miles	1,706,832 mi.	3,797,928 mi.
Cost Per Revenue Mile	$ .025	$ .015

SUMMARY OF OPERATING EXPENSES

(Depreciation: 3 Yrs. - No Res.)

ROUTE COMBINATION NUMBERS	1.		10.	
Flying Operations	$ 376,739.	$ .221	$ 818,253.	$ .216
Flight Equip. Maint.	139,400.	.082	296,450.	.078
Depreciation Flight Equip.	193,667.	.113	544,833.	.143
Ground Operations	455,080.	.267	688,160.	.181
Ground Equip. Maint.	17,000.	.010	38,000.	.010
Equip. Maint. - Indirect	80,500.	.047	175,200.	.046
Passenger Service	75,300.	.044	144,200.	.038
Traffic & Sales	148,300.	.087	303,400.	.080
Advertising & Publicity	36,100.	.021	90,900.	.024
General & Administrative	141,600.	.083	209,000.	.055
Depreciation - Gr. Equip.	43,333.	.025	55,667.	.015
TOTAL EXPENSE	$ 1,707,019.	$ 1.000	3,364,063.	.886
90% Scheduled Miles	1,706,832 mi.		3,797,928 mi.	

Exhibit STA-57 (R. 9575-9577) consisting of three pages is entitled *Short Haul Aircraft Developments.* It describes post-war twin-engine aircraft proposed or under development, including the 24 passenger Douglas Skybus, the 14 passenger Lockheed Saturn, and the 18 passenger Hughes Feederliner.

Comparative operating costs are given for use on these aircraft over State's proposed routes as against use of the Douglas DC-3. An evaluation of their ability to service the existing airports on State's routes is also made, in terms of the load permissible for the available runway lengths.

The relative inefficiency and disadvantages of existing smaller twin-engine aircraft than the DC-3, such as the 10 passenger Lockheed Electra, is pointed out. One reason given for this result is that in the air transport category the Civil Aeronautic Board's safety regulations (Part .04) for engine failure, penalize aircraft smaller than the DC-3 disproportionately to their reduction in size.

Eleven

Weather Record in Hours at ~~Ten~~ Principal Points on State's Proposed Routes. Exhibit STA-58

This record is a summary of data certain weather stations are now reporting on W B Form 1030. This data was also requested from Tri Cities (Va.-Tenn.) and Charleston, W. Va., but not received. This exhibit indicates the need for instrument operation over the proposed routes.

City	Initial Month	Best Month A Contact	Best Month B Instrument	Best Month C Closed	Best Month (B/C) (A/B/C)	Month	Severest Month A Contact	Severest Month B Instrument	Severest Month C Closed	Severest Month (B/C) (A/B/C)	Month	Twelve Months A Contact	Twelve Months B Instrument	Twelve Months C Closed	Twelve Months (B/C) (A/B/C)
Norfolk	Mar. '44	671	39	10	6%	June	517	153	74	30%	Jan.	7283	969	518	16%
Charleston,S.C.	Mar. '44	727	12	5	2%	July	568	55	101	20%	Dec.	7781	584	395	11%
Savannah	Sept. '44	717	27*		3%	May	537	72	135	27%	Dec.				**
Jacksonville	Mar. '44	730.4	10.9	2.7	1%	May	531	48.8	164.2	28%	Dec.	7999.5	417.7	342.8	8%
Greensboro	Mar. '44	701	12	7	2%	June	504	168*		25%	Feb.	7428	718	600	15%
Charlotte	Jan. '44	717.5	2.5	0	.3%	June	490.2	123.9	81.9	29%	Feb.	7486	744	554	15%
Greenville,S.C.	Jan. '44	729.7	10.1	4.2	1%	May	543	68.2	132.8	27%	Dec.	7395.8	624.9	639.8	14%
Knoxville	Mar. '44	739.6	4.3	0.1	.5%	July	515.8	156.7	71.5	30%	Dec.	7749.9	804.0	216.1	11%
Chattanooga	Jan. '44	715.7	20.1	3.2	3%	July	443	205	96	40%	Dec.	7298.7	948.0	537.3	16%
Cincinnati	May '44	689	25	6	4%	June	490	163	86	34%	Dec.	7330	1129	300	16%
Louisville	Jan. '44	713	4	3	.9%	May	451	232	61	39%	Jan.	7271	1182	307	17%**

*Includes closed hours

**Savannah data available only for Sept. '44 thru May '45.

Louisville individual months for Jan. '44 thru June '44 - no later available. Twelve months data for year 1943. This data is available for Louisville back through 1938. It shows better weather in the previous years. The percentage of the average instrument and closed hours to total hours for 1938 through 1943 was 12%.

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Exhibit STA-58

COST PER SEAT-MILE ANALYSIS OF SELECTED APPLICANTS

SHOWING STATE AIRLINES TO HAVE LOWEST COST PER POTENTIAL PASSENGER-REVENUE UNIT.

1 Airline	2 Number of Aircraft	3 Type of Aircraft	4 Passenger Capacity	5 Non-Mail Revenue	6 Break-Even Mail Pay	7 Cost Per Mile	8 Cost Per Seat Mile
~~Bluegrass~~	~~5~~	~~Beech 18-S~~	5	.3322	.0100	.3422	.0685
Commonwealth	8	Saturn	14	.3100	.2160	.5160	.0369
~~Gillespie~~	~~6~~	~~Beech 18-S~~	5	.2159	.1559	.3718	.0745
Piedmont	8	Norseman	6	.2746	.1699	.4445	.0741
Seaboard	3	Saturn	14	.4304	.0538	.4892	.0349
South East	6	Beech 18-S	5	.1000	.2388	.3388	.0778
Southeastern	10	Beech 18-S	5	.2235	.2302	.4537	.0907
Southern Airways	14	Beech 18-S	5	.2043	.2432	.4475	.0895
State	25	Douglas DC-3	24	.6540	.0330	.6870	.0286
Tri-State	11	Beech 18-S	5	.2088	.1078	.3166	.0633
Virginia	5	Beech 18-S	5	.2821	.2199	.5024	.1005
All Carrier Average (1942)	183		19.22	.7575	None Needed	.7298	.0379

NOTE:

The following 3 pages supply the basis for computing the Beech 18-S to be a 5 passenger airplane. The Saturn is still a hypothetical airplane, and as noted in STA-57, performance and operating cost cannot be finally determined. The DC-3 is the only airplane of those above that has an airline operating background to substantiate cost estimates. Applicants' cost and revenue estimates are accepted at face value, although these cost estimates for users of Beech 18-S vary as much as 63%.

All Carrier average is for 157 DC-3s, 10 Lodestars, and 3 Sikorsky S-42s.

Source of items under colums 2, 3, 5, & 7 are the individual exhibits of the applicants mentioned.

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Exhibit STA-59
Page 1 of 4 pages

Exhibit STA-60 [R. 9583]

HISTORY OF STATE AIRLINES, INC.

State Airlines, Inc., hereinafter frequently called "State," was founded to provide additionally needed scheduled air transportation. Non-scheduled operations were commenced to aid in determining the type and amount of scheduled service needed and location as to routes.

Active work on State Airlines began May 1, 1939. This lead to its incorporation on December 19, 1939, and, through the steps enumerated below, to its present position as an applicant in the Southeastern states case.

Surveys

The six-year history of State has frequently been marked by surveys of various kinds designed thoroughly to plan its progress toward its sole objective of developing scheduled service that will carry more passengers, mail, and property per capita of the population it seeks to serve than any other air carrier.

May 1, 1939

The first route survey was made. This included several existing routes and sixty-five new routes throughout the United States. Potential traffic estimates were based on a constant relationship that was found to exist between the number of air and surface schedules on certain air routes then operating, together with known traffic. This survey showed that the Southeast, more than any other section of the country, needed an integrated system of new routes. Other sections showed need for service, but in each case where the need was greater, the route was more or less isolated except in reference to existing air service.

JUNE 1939

The next survey was made on laws relating to establishment of a company and operations under the Civil Aeronautics Act of 1938. This survey, followed by one on equipment, operating methods and personnel, showed that it would be practical and legal to operate interstate on a non-scheduled basis and thereby render service which would serve as an indication of scheduled needs.

JULY 1939

An additional survey was made to determine the accept-
[R. 9584]
ability of non-scheduled service to the average scheduled airline passenger. This survey showed that there were at least comparatively few potential passengers who stated for other than insurance reasons that they would not ride in single-motor planes when such was the only air transportation available.

Since June 1939 a continuing study has been made of decisions of the Civil Aeronautics Board to follow trends in the Board's reasoning on scheduled air transportation.

JANUARY 1940

In this month, continuing through March, an exacting survey was made in six cities—Louisville, Knoxville, Charlotte, Raleigh, Charleston, S. C. and Savannah—among all classes of business firms as to points travelled, means preferred, and number of trips made. In addition the survey was used to determine the relative importance of factors affecting the choice of travel means.

It was as a result of this and previous surveys that State suggested to Charlotte, Columbia, and Charleston, S. C., that it supply a limited non-scheduled service until such time as scheduled service might be authorized. This suggestion was favorably received and equipment was ordered in May 1940 and put in service April 3, 1941.

OCTOBER 1940

From this month through January 1941, a survey was conducted among a large number of cities in Virginia, the Carolinas, and Georgia on the needs for a mail pick-up service. This survey showed that many points lacked adequate air-mail service. It was determined by State Airlines, however, that in view of the lack of passenger service and the higher cost to the Government and lesser utility of solely pick-up service, the latter had probably best be instituted only after it was known what cities would be authorized for the former.

DECEMBER 1941
AUGUST 1942
JUNE 1943

These dates represented the culmination of what might better be termed studies than surveys. They were studies, however, which were comprehensive as to time on the subject of rates. Each date represents a rate change made as a result of experience and anticipated operating conditions. The first theoretical rates were established with the inauguration of service. Experience required an upward revision in December 1941. An equipment change from the original small Bellanca to a larger Cessna required a change in August 1942. Subsequent revisions reflect the result of operating experience with the Cessna. Present rates, are shown in a counter circular, Exhibit STA-61, and Rates and Tariff Rules, Exhibit STA-62.

[R. 9585]

APRIL 3, 1941 TO DATE

Since the above date State has kept a record of every inquiry, request and trip that it has received or made. The results of this record, comprising a period of over three and one-half years, including over 5,600 such demands, is presented in Exhibit STA-22. That exhibit is a factual record

which, so far as is known, is the only such record ever made available to the Board, directly indicating air traffic potentials over routes not yet authorized. It is also evidence of the pioneering that State has done out of Charlotte over the routes it seeks.

LEGAL

DECEMBER 19, 1939.

The legal history of State Airlines, Inc., started on December 19, 1939, when the Company was incorporated in the State of Delaware. Its next legal step was to become qualified to conduct business in both the States of North Carolina and South Carolina.

OCTOBER 21, 1941.

Actual operations, begun on April 3, 1941, shortly proved the soundness of earlier traffic surveys and resulted in the filing of an application with the Civil Aeronautics Board on October 21, 1941, for three routes, Docket No. 673.

This application was the first filed with the Board for Scheduled service southward out of Pittsburgh to the Piedmont and Florida and southward out of Detroit to Columbus, Ohio, connecting with the Pittsburgh route at Roanoke for service to Florida. This application was also the first to propose east-west service through Virginia, between four of its largest cities, Roanoke, Lynchburg, Richmond, and Norfolk, and connecting these cities with Charleston, the capital of West Virginia. It was also the first to propose east-west service for North Carolina through Charlotte, largest city in the State.

Following the application, State became an intervener in the Atlantic-Seaboard case, filed a brief and exceptions to the examiner's report, and participated in oral argument before the Board. State was the only party to that case who maintained that the additional service proposed for the Pied-

[R. 9586]

mont would be jeopardized by granting the applications then being considered.

The intervention of State Airlines, nc., was upheld by the Examiners and by the Board, who consolidated other applications for service in the area and ordered an early hearing thereon in their first decision on the Atlantic-Seaboard case, order No. 2440, served September 14, 1943.

MARCH 22, 1943.

On this date, the Civil Aeronautics Board issued an order, on its own initiative, for the investigation of "local feeder pick-up" air service, which was assigned Docket No. 857. State Airlines, Inc., offered testimony at the hearing which started September 22, 1943. On February 29th, State filed comments on the Examiner's report which had been issued February 9, 1944, and on April 5th participated in oral argument before the Board, in support of the Examiner's findings.

State's testimony at the feeder hearing covered many phases of the subject, offered several suggestions to make such service practical, stressed the need for frequency of service to secure local traffic, commented on the relationship of overall cost to the passenger of air service versus ground service as a traffic producing factor, and discussed the suitability of existing aircraft for the purpose.

State is the only new applicant of those included in the Southeastern States case which filed exhibits, comments on the Examiner's Report, and appeared at oral argument in the Feeder Investigation.

OCTOBER 21, 1941.

Subsequently to the Board's decision of September 14, 1943, ordering an early hearing on State's application, Docket No. 673, State summarized the experience it had had on its non-scheduled operations during the intervening period,

namely from October 21, 1941, when its first application had been filed, to September 14, 1943, which summary resulted in revision of its original application and a new application, Docket No. 1206. Both of these were filed with the Board on October 19, 1943.

Hearing on these applications was held starting June 12, 1944. No decision has yet been rendered on these applications. However, although there has been no decision, State refiled for the same ten routes with one minor change on January 30, 1945, under Docket No. 1723. This was done to protect State's interests since the Examiner, in his report issued December 6, 1944 on the Great Lakes to Florida case, [R. 9587] indicated the State's applications belonged in the Southeastern States case because of their local nature, although the Board ordered that hearing to determine how local service should be rendered. Subsequently, this application, which also included one new route, was divided by a Board order and the Docket No. 1776 applied to that portion included in this hearing. Not included was Detroit and Pittsburgh terminals and portions of the routes entering those terminals, which were left under Docket No. 1723, unassigned for hearing.

Eight days earlier, on January 22, 1945, State had filed an application for four new routes under Docket No. 1711, which are of lesser importance than those in Dockets 1723 and 1776, but which constitute, as presented in these exhibits, a logical and integrated airline system. Docket No. 1114 is also included in this hearing, but no proof is being submitted except as included under Docket No. 1711.

An examination of at least the majority of other pending applications, for both new and certificated carriers, fails to show a more integrated system for a company without other transportation interests over new routes which do not parallel existing air routes to any degree and furnish extraordinary time savings between important cities.

FINANCIAL

DECEMBER 19, 1939.

Following the extensive surveys made, starting May 1, 1939, it was determined to secure subscriptions for stock which would be dependent upon sufficient pledges secured within a reasonable period of time to give the company enough funds to purchase two small ships. Work on this phase was started the end of September 1939, and a sufficient amount was pledged by approximately the first week in December 1939 to permit incorporation of the Company on December 19, 1939.

JUNE 1941.

As previously mentioned, it was not until after an additional survey had been made that equipment was ordered in May 1940. It was then anticipated that operations would commence in July, since three weeks delivery had been promised by the manufacturer. The equipment was not delivered, however, until November 1940. Furthermore, although the equipment was licensed, it was considered necessary to make certain changes, which, with thorough flight checks, prevented inauguration of service until April 3, 1941. The expense of maintaining an organization and covering the rework on the equipment required additional funds, which

[R. 9588]

were raised in June and July 1941 at approximately twice the speed originally made.

APRIL 1942.

Additional funds were sought in April and May of 1942 to enable the Company to continue its operations, the expense of which had increased because of the War, and, so far as possible, to prosecute its application for scheduled services, which meanwhile had been held up along with all others by the Board's order of December 12, 1941. These efforts to raise funds were only moderately successful, however, because of the indefinite position of the Board on again holding

hearings and because in these two months, April and May 1942, the airlines lost approximately half of their planes to the Army.

It was felt, however, that although the small investor might be influenced by such an unsatisfactory situation, since it would not be worth his while to make more than a casual estimate of future possibilities, this would not apply to one who would take a more substantial interest.

MARCH 1943

Consequently, such an interest was sought, and after negotiations proceeding as time and circumstances permitted over a period of nine months, an arrangement was completed through one of our present officers in March 1943 assuring the Company of ample funds. Both prior and subsequently to March 1943, the Company has either been informed of or has directly received numerous requests from others representing individuals, groups, and companies, for a substantial interest in the Company.

JUNE 1, 1944.

It is evident that this willingness to invest in State Airlines, Inc., which has not operated at a profit, is a reflection of the soundness of proposed scheduled operations and of the results it has produced with the money it has spent. Its most recent balance sheet of February 28, 1945, Exhibit STA-72, represents approximately five and one-half years as a going concern, during a part of which period it operated the only non-scheduled service at airline rates in the United States, if not the World, and during most of the period from April 3, 1941, to date, it has supplied air transportation at rates substantially less than quoted elsewhere for comparable service.

JANUARY 1942

During January and February, 1942, contacts were made with several underwriting firms, as a result of which it was

definitely established that should the Company be awarded routes, barring unusual market conditions, ample funds could be secured to provide the necessary capital. It was also established at about the same time that equipment trust financing, if needed, would be available to the Company through banks. More recently it has become apparent that, through increased interest in air transportation and the improved financial record of scheduled carriers, circumstances are even more favorable now to secure capital than was the case three years ago.

Evidence was introduced on behalf of State in the Great Lakes to Florida hearing by an underwriter who has participated in financing four of the nation's leading airlines, including American Export, one of the only two new applicants to receive a temporary certificate since the Act was passed in 1938.

During the period of its operations since April 3, 1941, State has kept its books according to the "Uniform System of Accounts for Domestic Air Carriers". Prior to January 1, 1944, the old system was used, and since that date, the new system, as published in 1943, has been employed.

Operations

After ordering two planes in May 1940, visits were periodically made to the factory to check on their progress until they were delivered in November 1940. Meanwhile, advertising and publicity material was prepared, consisting of folders, signs of various types, tickets, ticket envelopes, envelope stuffers, and other items, including a number of newspaper ads. Publicity consisted of prepared releases on various phases of the operation. Ground personnel and flight operations manuals were prepared. Between November 1940 and April 3, 1941, however, all efforts were directed toward making the aircraft suitable for safe operation. It

was not until approximately March 1, 1941, that the planes were flown to Charlotte, and not until about March 28th, after equipment, terrain, and pilot checks, that it was decided to start service April 3, 1941. In connection with the inauguration, it is interesting to note that the first passenger was not carried until April 5th, and that this passenger was a girl.

However, although several newspaper advertisements had been prepared, only one was run, and until May 8, 1944, no other extensive advertising was done. None was necessary; although three days elapsed before the first revenue passen-

[R. 9590]

ger rode in a State plane, from that day until May 8, 1944, the early passengers formed the backlog of State's business, riding repeatedly to such an extent that only additional equipment would have justified continued advertising. May 8, 1944, marked a turning point, in that on that date an equipment changeover was completed which increased State's original overall capacity approximately four times. Starting on that day, State sponsored three daily weather broadcasts by the CAA Weather Bureau from the Douglas Municipal Airport at Charlotte, which were carried over WSOC, a Charlotte commercial radio station. The response was so great that from June 11, 1944 until its cancellation in October, only one daily broadcast was used. During those months State exceeded all previous records. Since October, weather and the overhaul of aircraft have reduced the traffic volume.

Since service was first inaugurated in 1941, many milestones have been passed, some of which have already been related. Shop facilities were installed; suitable wage scales were established; radio problems were solved; and other operational matters were satisfactorily concluded. All of this was done without any Government contracts or financial assistance of any kind.

Today it may be safely said that State Airlines, Inc., as a non-scheduled operator, excels all other non-scheduled operators in respect to the following characteristics, considered as a whole:

1. Fares: Standard fares established which are informally on record with the Tariff Section of the CAA.

2. Safety: Only instrument-rated pilots employed, ships completely equipped for night and instrument flight—no injury to a passenger or crew member—no plane lost in over four years of operating under all weather conditions, over all kinds of terrain.

3. Insurance: Passenger liability insurance in excess of Air Transport Association requirements is carried.

4. Speed: Cruising speed of 140 miles per hour.

5. Comfort: Special ventilation, heaters, clean seat covers, pillows supplied on request.

6. Accessibility: Telephone service on reservations furnished 24 hours a day.

As an applicant for scheduled services, it is important to note that State has supplied the maximum in desirable service that has been possible, although that maximum, in view of the severe limitations under which it operates non-

[R. 9591]

scheduled service, is only a minute portion of the air transportation needs over the routes it seeks authority to operate. Some of its present handicaps toward rendering with non-scheduled service more than a mere fraction of the transportation possible on a scheduled basis are:

1. No regular service can be advertised.

2. The safety, comfort, and speed of twin-motor operation are not feasible.

3. The fare for one passenger one way is in most instances in excess of three times the proposed scheduled fare.

4. Baggage is extremely limited.

5. The average life insurance policy is void on a non-scheduled operation.

6. Because of absence of regular schedules, ground transportation costs to the airport are usually excessive.

7. Night and instrument operations are not practical except in an emergency.

But in spite of these limitations, State's repeat-rider record is very high. There are a number of State passengers who travel with State week in and week out, the year round, between all points where scheduled service is not available.

On a national basis, State Airlines, Inc., is, so far as is known, the only applicant that does not have a certificate for scheduled services that:

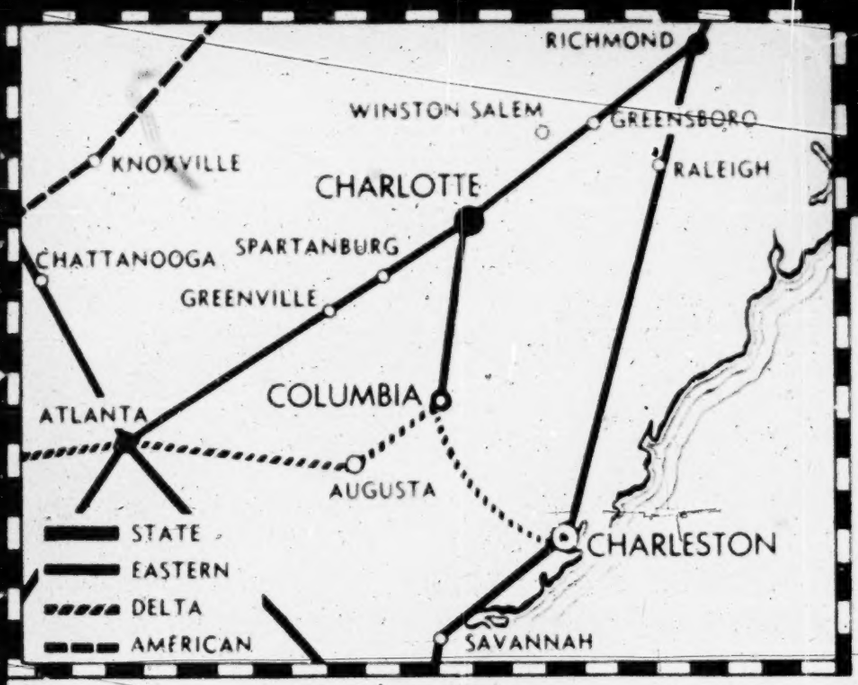
1. Has taken into consideration the air transportation needs of the United States as a whole, rather than simply those of the locality where it happens to be located.

2. Is solely engaged in air transportation.

3. Has rendered air transportation exclusively for a continuous period of over four years.

4. Has established the highest operation standards of any company in its field.

5. Has proposed scheduled operations in keeping with present standards which will not require a subsidy mail rate.



GENERAL INFORMATION

TELEPHONES: Charlotte 3-7911 and Columbia 2-1065.

FLY AT YOUR CONVENIENCE: Planes leave any time that you the passenger desires (subject to prior reservations). At any time during the day you may arrange arrival or departure so that time is saved at either end of the trip.

TICKETS AND RESERVATIONS: Tickets may be purchased at leading hotels, travel agents, telegraph and airline offices. Telephone or wire Charlotte for further information.

FARES AND GROUND TRANSPORTATION: A special rate is available between Charlotte, North Carolina and Columbia, South Carolina. This and other rates are shown on the back of this folder.

CONNECTIONS: State Airlines cooperates in every way in making connections with other airlines for northern, southern and western points, enabling passengers to make important connections anywhere in the United States without delay, both from Charlotte and outside points. Rates on the back of this folder utilize American, Delta, Eastern, Pennsylvania Central and TWA service. For example, State can make connections out of Charlotte with these lines for four additional schedules to Washington or New York City.

BAGGAGE: Forty pounds of baggage carried free. Excess baggage at standard rates.

CANCELLATIONS: Company reserves right to cancel flight before or during passage as it considers advisable or necessary. Unused portion of fare will be refunded to passenger.

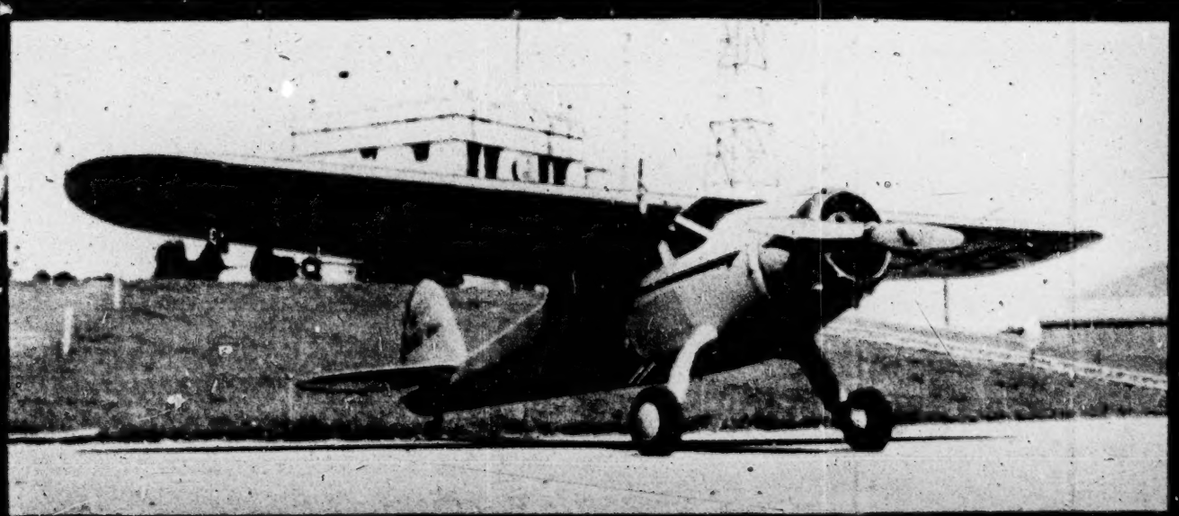
PASSENGERS DELAYED beyond stated departure time must confirm reservation.

EQUIPMENT: The Company now operates the Cessna Airmaster which in addition to being fast is comfortable, quiet and extremely reliable, powered with the Warner Super Scarab motor. Only experienced pilots are employed. Full insurance is carried. Two-way RCA and Lear radio equipment provides communication. The photographs below show the plane and its appealing interior, which combined with special sound proofing, scientific ventilation and direct contact with the pilot at all times makes for comfort, confidence and relaxation during flight.

YOUR OWN PRIVATE SHIP: State Airlines is unique in that passengers enjoy the feel of riding in their own private plane with a friendly pilot who gives every consideration to the comfort and safety of his passengers. The time saving convenience of flying is doubly enhanced by complete freedom to make the fullest utilization of every minute and at the same time enjoy individualized service.

SPECIAL SERVICES: The business man who may need to visit a neighboring city for a few hours can arrange with State to fly to his destination and have the plane wait until he is ready to return. Frequently State enables busy executives to make several calls in different cities many miles apart in the course of only a few hours. Consult State for any special travel need. You may save valuable time and avoid much inconvenience.

All information subject to change without notice.
November, 1942. Form SA-301



STATE AIRLINES

FARES EFFECTIVE AUGUST 1, 1944. PLUS TAX

Charlotte Direct To Or From:	Total Time	1 Pass. 1 Way or Round Trip	2 or 3 Passengers	
			One Way	Round Trip
Asheville, N. C.	:45	$21.60	$25.20	$28.80
Augusta, Ga.	1:10	32.90	38.35	53.85
Bristol (Tri-Cities) Tenn.-Va.	1:10	33.60	39.20	44.80
Charleston, S. C.	1:30	42.30	50.40	57.60
Chattanooga, Tenn.	2:10	67.20	78.40	89.60
Chicago, Ill.	5:10	147.10	171.65	196.15
Cincinnati, O.	2:30	80.40	93.80	107.20
Cleveland, O.	3:15	95.70	120.95	138.25
Columbia, S. C.	:40	18.50	24.10	27.50
Detroit, Mich.	4:50	137.75	160.70	185.70
Fayetteville, N. C.	1:00	28.10	32.75	37.45
Greensboro, N. C.	:40	20.40	23.80	27.20
Greenville, S. C.	:40	20.40	23.80	27.20
Indianapolis, Ind.	3:55	108.00	126.00	144.00
Jacksonville, Fla.	2:40	83.05	96.90	110.70
Knoxville, Tenn.	1:30	43.20	50.40	57.60
Louisville, Ky.	2:30	80.65	94.10	107.50
Memphis, Tenn.	4:30	128.40	149.80	171.20
Miami, Fla.	5:40	162.25	189.30	216.30
Nashville, Tenn.	2:35	81.60	95.20	108.80
Pittsburgh, Pa.	2:50	89.05	103.90	118.70
Raleigh, N. C.	1:05	31.90	37.25	42.55
Roanoke, Va.	1:15	37.20	43.40	49.60
St. Louis, Mo.	5:10	147.60	172.20	196.80
Spartanburg, S. C.	:30	14.40	18.80	19.20
Winston-Salem, N. C.	:40	19.20	22.40	25.60

NOTE: Fares else[illegible] direct, via connections, one way, round trip, and for 1, 2 or 3 passengers quoted on request.

"Keep 'Em Flying — Save Rubber"

202 Exhibit STA-62

R. 9592

STATE AIRLINES, INC.

CHARLOTTE, N. C.

TELEPHONES
3-7911
3-8803

AUGUST 1, 1944

RESERVATIONS AND CONNECTIONS

Fly at your convenience. Planes leave any time that passenger desires subject to prior reservations.

Safe, fast, comfortable and fully insured planes available for daylight service. Trips will be taken at night under emergency conditions only.

Fares to 164 cities in the United States from Charlotte are shown. Check with us for current airline connections from these cities to any points. Fares quoted to and between any cities not listed.

Fares are for air miles only. Fares are based on whether one way, or round trip, and the number of passengers traveling together. Frequently fares involve less cost than any other means because of direct routing.

Consult with us for special travel rates that may be in effect on a seasonal basis.

Make reservations in advance. For information and reservations wire or telephone 3-7911 or 3-8803. State will immediately confirm, if so requested, for its own or connecting service. State will request airline space if desired.

TARIFF RULES

Passengers allowed one hour free waiting time for each $15.00 of fare, not including transportation tax. Additional time $2.50 per hour. No waiting time, but overnight charge of $10.00, from 8:00 P. M. to 8:00 A. M. Overnight charge is applicable to trips which require an overnight stop, except that there will be no waiting time or overnight charges on trips when occasioned by flight delay. Such mileage as ship actually flies will be charged for trips partially completed or rerouted due to weather conditions.

The above provisions as to waiting time apply to the use of return portions of round trip tickets.

The Company will make every effort to have prompt arrivals and departures, but failure to do so will only entitle passenger to refund on mileage not flown.

When passenger notified prior to departure of a limit on waiting time available, plane not obligated to wait over 30 minutes past limit and entire one way fare collectible although trip uncompleted. Failure to cancel reservations for trip from points other than Charlotte prior to plane movement shall make passenger liable for fare if plane is ready and available at requested time and place.

Passengers picked up at points other than Charlotte shall pay the same rates as for trips originating at Charlotte, including ship mileage from Charlotte and returning ship to Charlotte.

Only passengers paying for all seats have exclusive use of plane. The rates for two and three passengers apply only to groups traveling together on a single ticket. Fares for passengers on separate tickets on the same flight will be combined in so far as the Company considers it feasible to do so at an extra charge of 1c per passenger mile.

In addition, the same rules and regulations shall be applicable as contained in the local and Joint Passenger Tariff No. 1 issued by the Air Traffic Conference of America, and as currently in effect. The following extracts and exceptions are to be noted:

Tickets: Shall be valid for a period of 90 days after date of issuance.

Cancellations: The Company may cancel any reservation or refuse to carry any person when such action is necessary to accommodate other persons or missions or for any other reason relating to the successful prosecution of the war.

Claims: No action shall be maintained for any loss, damage, injury or delay unless written notice of claim is presented to the Company's main office within 30 days after such occurrence and action actually begun within one year after such occurrence.

Refunds: Refunds will be made in full for unused tickets properly certificated when presented prior to expiration date and unused portions refunded for the total amount, less the established rate for the used portion.

Baggage and Property: Free baggage allowance is limited to forty pounds for each fare paying passenger. The minimum charge for excess baggage is 25c. The excess baggage charge is one-tenth cent per pound per mile carried. For property shipments unaccompanied by passenger, rates will be the same as for passengers, each 170 pounds or fraction thereof, being considered as equivalent to one passenger.

Children's Fare: One child under two years of age and not occupying a seat to the exclusion of other passengers, with each accompanying passenger twelve years of age or over, will be carried free.

RATE BASIS

Passenger fares are based on a 12c per mile deadhead or single passenger rate, and a 16c per mile group rate for two or three passengers.

EQUIPMENT

Cessna four-place airplanes provided with capacity of three passengers, or a maximum of 510 pounds, composed of passengers or property or both.

(202)
(R. 9593).

FARES

Subject to 15% Transportation Tax

Charlotte to:	Miles	Total Time	One Passenger One Way or Round Trip	Two or Three Passengers One Way	Two or Three Passengers Round Trip
Aiken, S. C.	118	1:60	28.30	33.85	37.75
Akron, O.	495	3:05	97.20	113.40	129.60
Allendale, S. C.	156	1:20	37.45	43.70	49.90
Anderson, S. C.	118	1:00	28.30	33.85	37.75
Anniston, Ala.	304	2:20	72.95	85.10	97.30
Asheville, N. C.	90	:45	21.60	25.20	28.80
Athens, Ga.	165	1:25	39.60	46.20	52.70
Atlanta, Ga.	232	1:45	55.70	64.95	74.25
Augusta, Ga.	137	1:10	32.90	38.35	53.85
Baltimore, Md.	395	3:00	91.80	110.00	126.40
Beaufort, N. C.	248	1:55	59.50	69.25	79.35
Beckley, W. Va.	180	1:30	43.20	50.40	57.60
Birmingham, Ala.	364	2:40	84.95	99.10	113.30
Blacksburg, Va.	140	1:10	33.60	39.20	44.80
Blackstone, Va.	210	1:35	50.40	58.80	67.20
Bloomington, Ill.	600	5:00*	144.00	168.00	192.00
Bluefield, W. Va.	150	1:15	36.00	42.00	48.00
Boston, Mass.	748	6:10*	179.50	209.65	239.35
Bristol, Tenn.	140	1:10	33.60	39.20	44.80
Brunswick, Ga.	282	2:10	67.70	78.95	90.25
Buffalo, N. Y.	540	4:35*	129.60	151.20	172.80
Burlington, N. C.	103	:50	24.70	28.85	32.95
Camden, S. C.	72	:35	17.30	20.15	23.05
Camp Mackall, N. C.	82	:40	19.70	22.95	26.25
Chapel Hill, N. C.	117	1:00	28.10	32.75	37.45
Charlottesville, Va.	248	1:55	59.50	69.25	79.35
Charleston, S. C.	180	1:30	43.20	50.40	57.60
Charleston, W. Va.	254	1:55	60.95	71.10	82.30
Chattanooga, Tenn.	280	2:10	67.20	78.40	89.60
Cherry Point, N. C.	230	1:45	55.20	64.40	73.60
Chicago, Ill.	613	5:10*	147.10	171.65	196.15
Chillicothe, O.	324	2:30	77.75	90.70	103.70
Cincinnati, O.	335	2:35	80.40	93.80	107.20
Clarksburg, W. Va.	286	2:10	68.65	80.10	91.50
Clarksville, Tenn.	373	2:50	89.50	104.45	119.35
Cleveland, O.	432	3:15	95.70	120.95	138.25
Clifton Forge, Va.	188	1:35	45.80	52.65	60.15
Columbia, S. C.	86	:40	18.50	24.10	27.50
Columbus, Ga.	302	2:20	72.50	84.55	96.65
Columbus, O.	358	2:45	85.90	100.25	114.50
Covington, Va.	188	1:40	45.10	52.65	60.15

Charlotte to:	Miles	Total Time	One Passenger One Way or Round Trip	Two or Three Passengers One Way	Two or Three Passengers Round Trip
Dallas, Texas	980	8:15**	236.40	268.80	297.20
Danville, Va.	130	1:05	31.20	36.40	41.60
Dayton, O.	358	2:45	85.90	100.25	114.50
Daytona Beach, Fla.	439	3:20	105.35	122.90	140.50
Denver, Colo.	1393	26:00‡	334.30	390.05	445.75
Detroit, Mich.	574	4:50*	137.75	160.70	183.70
Durham, N. C.	130	1:05	31.20	36.40	41.60
Easton, Pa.	488	4:15*	119.50	139.45	159.35
Elizabeth City, N. C.	276	2:05	66.25	77.30	88.30
Elking, W. Va.	258	2:00	61.90	72.25	82.55
El Paso, Texas	1554	26:45‡	372.95	435.10	497.30
Evansville, Ind.	416	3:10	99.85	126.50	123.10
Fayetteville, N. C.	117	1:00	28.10	32.75	37.45
Findlay, O.	432	3:15	103.70	120.95	138.25
Florence, S. C.	100	:50	24.00	28.00	32.00
Fort Wayne, Ind.	460	4:40*	110.40	128.80	147.20
Fort Worth, Texas	990	8:20**	237.60	277.20	316.80
Frankfort, Ky.	300	2:15	72.00	84.00	96.00
Gainesville, Ga.	180	1:30	43.20	50.40	57.60
Georgetown, S. C.	157	1:20	37.70	43.95	50.25
Greensboro, N. C.	85	:40	20.40	23.80	27.20
Greenville, S. C.	85	:40	20.40	23.80	27.20
Greenwood, S. C.	103	:50	24.70	28.85	32.95
Griffin, Ga.	240	1:50	57.60	67.20	76.80
Goldsboro, N. C.	170	1:25	40.80	47.60	54.40
Hamlet, N. C.	68	:35	16.30	18.85	21.75
Henderson, N. C.	160	1:20	38.40	44.80	51.20
Hendersonville, N. C.	85	:40	20.40	23.80	27.20
Hickory, N. C.	42	:20	10.10	11.75	13.45
Hopewell, Va.	253	1:55	60.70	70.85	80.95
Houston, Texas	975	8:25**	234.00	273.00	312.00
Huntington, W. Va.	252	1:55	60.50	70.55	80.65
Indianapolis, Ind.	450	3:55*	108.00	126.00	144.00
Jackson, Miss.	570	5:10*	136.80	159.60	182.40
Jacksonville, Fla.	346	2:40	83.05	96.90	110.70
Jesup, Ga.	255	2:00	61.20	71.40	82.00
Johnson City, Tenn.	140	1:10	33.60	39.20	44.80
Kansas City, Mo.	840	6:50*	201.60	235.20	268.80
Kingsport, Tenn.	140	1:10	33.60	39.20	44.80
Kinston, N. C.	190	1:35	45.60	53.20	60.80
Knoxville, Tenn.	180	1:30	43.20	50.40	57.60

*Each star represents a 30 minute stop.
‡Includes overnights and 30 minute stops.

(R. 9594) (p. 202)

FARES

Subject to 15% Transportation Tax

Charlotte to:	Miles	Total Time	One Passenger One Way or Round Trip	Two or Three Passengers One Way	Two or Three Passengers Round Trip
Laurens, S. C.	77	:35	18.50	21.55	23.65
Lexington, Ky.	280	2:10	67.20	78.40	89.60
Little Rock, Ark.	665	5:30*	159.60	186.20	212.80
Los Angeles, Calif.	2419	34:15‡	580.55	677.30	744.10
Louisville, Ky.	336	2:30	80.65	94.10	107.50
Lumberton, N. C.	116	:55	27.85	32.50	37.10
Lynchburg, Va.	174	1:25	41.75	48.70	55.70
Macon, Ga.	223	1:50	53.50	62.45	71.35
Marion, O.	393	3:00	94.30	110.05	125.75
Memphis, Tenn.	535	4:30*	128.40	149.80	171.20
Meridian, Miss.	495	4:15*	118.80	138.60	158.40
Miami, Fla.	676	5:40*	162.25	189.30	216.30
Milwaukee, Wis.	696	5:45*	167.05	194.90	222.70
Minneapolis, Minn.	972	8:20**	233.30	272.15	311.05
Mobile, Ala.	526	4:30*	126.25	147.30	168.30
Montgomery, Ala.	370	2:50	88.80	103.60	118.40
Morgantown, W. Va.	315	2:25	75.60	88.20	100.80
Moultrie, Ga.	326	2:30	78.25	90.30	104.30
Muscle Shoals, Ala.	385	2:55	92.40	107.80	123.20
Myrtle Beach, S. C.	157	1:20	37.70	43.95	50.25
Nashville, Tenn.	340	2:35	81.60	95.20	108.80
New Bern, N. C.	230	1:45	55.20	64.40	73.60
New Orleans, La.	647	5:25*	155.30	181.15	207.05
New River, N. C.	200	1:40	48.00	56.00	64.00
New York City	576	5:00*	143.25	166.30	189.30
Norfolk, Va.	310	2:20	74.40	86.80	99.20
Oklahoma City, Okla.	945	8:10**	226.80	264.60	302.40
Omaha, Neb.	918	8:00**	220.30	257.05	293.75
Orangeburg, S. C.	*122	1:00	29.30	34.15	39.05
Orlando, Fla.	464	4:00*	111.35	129.90	148.50
Palm Beach, Fla.	626	5:15*	150.25	175.30	200.30
Panama City, Fla.	450	3:55*	108.00	126.00	144.00
Parris Island, S. C.	200	1:40	48.00	56.00	64.00
Peoria, Ill.	640	5:20*	153.60	179.20	204.80
Petersburg, Va.	242	1:50	58.10	67.75	77.45
Philadelphia, Pa.	478	4:10*	114.70	133.85	152.95
Phoenix, Ariz.	1951	30:30‡	468.25	546.30	624.30
Pinehurst, N. C.	87	:40	20.90	24.35	27.85
Pittsburgh, Pa.	371	2:50	89.05	103.90	118.70
Portland, Ore.	2543	35:15‡	610.30	712.05	813.75
Portsmouth, O.	270	2:00	64.80	75.60	86.40

Charlotte to:	Miles	Total Time	One Passenger One Way or Round Trip	Two or Three Passengers One Way	Two or Three Passengers Round Trip
Princeton, W. Va.	150	1:15	36.00	42.00	48.00
Pulaski, Va.	130	1:05	31.20	36.40	41.60
Raleigh, N. C.	133	1:05	31.90	37.25	42.55
Reading, Pa.	455	4:00*	109.20	127.40	145.60
Richmond, Va.	260	2:00	62.40	72.80	83.20
Roanoke, Va.	155	1:15	37.20	43.40	49.60
Rochester, Minn.	894	7:15*	214.55	250.30	286.10
Rock Hill, S. C.	25	:15	6.00	7.00	8.00
Rocky Mount, N. C.	184	1:30	44.15	51.50	58.90
Rome, Ga.	254	1:55	60.95	71.10	82.30
St. Louis, Mo.	615	5:10*	147.60	172.20	196.80
Salisbury, N. C.	35	:15	8.40	9.80	11.20
San Antonio, Texas	1168	9:50**	280.30	327.05	373.75
Sanford, N. C.	101	:50	24.25	28.30	32.30
San Francisco, Calif.	2683	50:20‡	643.90	751.25	858.55
Sarasota, Fla.	555	4:45*	133.20	155.40	177.60
Savannah, Ga.	222	1:40	53.30	62.15	71.05
Scranton, Pa.	450	3:55*	108.00	126.00	144.00
Selma, Ala.	405	3:05	97.20	113.40	129.60
Shelby, N. C.	36	:15	8.65	10.10	11.50
South Bend, Ind.	534	4:30*	128.15	149.50	170.90
Spartanburg, S. C.	60	:30	14.40	18.80	19.20
Staunton, Va.	232	1:45	55.70	64.95	74.25
Suffolk, Va.	270	2:05	64.80	75.60	86.40
Sumter, S. C.	95	:45	22.80	26.60	30.40
Syracuse, N. Y.	616	5:10*	147.85	172.50	197.10
Tampa, Fla.	514	4:25*	123.35	143.90	164.50
Terre Haute, Ind.	495	4:15*	118.80	142.60	158.40
Tifton, Ga.	300	2:15	72.00	84.00	96.00
Tulsa, Okla.	877	7:40**	210.50	245.55	280.65
Wadesboro, N. C.	51	:25	12.25	14.30	16.30
Walterboro, S. C.	160	1:20	38.40	44.80	51.20
Washington, D. C.	350	2:40	84.00	98.00	112.00
Waycross, Ga.	287	2:10	68.90	80.35	91.85
Wichita, Kans.	932	8:05**	223.70	260.95	298.25
Wilkes-Barre, Pa.	510	4:20*	122.40	142.80	163.20
Williamsport, Pa.	474	4:05*	113.75	132.70	151.70
Wilmington, N. C.	180	1:30	43.20	50.40	57.60
Wilson, N. C.	174	1:25	41.75	48.70	55.70
Winston-Salem, N. C.	80	:40	19.20	22.40	25.60
York, Pa.	395	3:00	94.80	110.60	126.40

*Each star represents a 30 minute stop.
‡Includes overnights and 30 minute stops.

STATE AIRLINES, INC.

CHARLOTTE, N. C.

FARES AND TARIFF RULES

AUGUST 1, 1944

(SUBJECT TO CHANGE WITHOUT NOTICE)

(202 - Reverse)

Exhibit STA-63

R.9595

[Exhibit STA-63]

STATE'S NON-SCHEDULED TICKET FORM

(R.9595)
(P.203)

Narrative

The ticket shown below was developed as a result of experience from using an earlier type. It incorporates provisions for all charged in a form readily understandable to the passenger, and easily issued by the agent.

This ticket has been filled out to show, as an example, the cost of a single passenger's round trip from Charlotte to Louisville, wherein he spends two nights at Louisville. A comparison of this cost with existing costs and State's proposed costs are as follows. A comparison of the time involved is also shown. Taxes are included.

Charlotte to Louisville Round Trip

	Time-Hours	Fare-Dollars
Existing Air Service	11:31	75.79
Charter Service	5:00	150.75
State's Proposed Service	5:28	46.55

The respective times and costs plainly show that, whereas charter service today has a time advantage against existing air service, the proposed scheduled service would practically eliminate that advantage and be immeasurably more attractive to passengers because of increased safety, reliability, and comfort at about one-fourth the cost.

Form SA108-A

Nº 1201

ACCOUNTING STUB

SUBJECT TO TARIFF REGULATIONS

STATE AIRLINES, Inc.

From Charlotte, N.C.
To Louisville, Ky.
To Charlotte, N.C.
To

Date	No. Pass.
2/4/45	1
2/6/45	1

	ONE WAY	ROUND TRIP
Fare		$ 80.65
Tax		12.10
Waiting Time		38.00
Over-nights		20.00
Excess Baggage		
Total		150.75

REMARKS:

Agent MLG Date 2/4/45

Form SA108-A

Nº 1201

PASSENGER'S RECEIPT

SUBJECT TO TARIFF REGULATIONS

STATE AIRLINES, Inc.

From Charlotte, N.C.
To Louisville, Ky.
To Charlotte, N.C.
To

Date	No. Pass.
2/4/45	1
2/6/45	1

	ONE WAY	ROUND TRIP
Fare		$ 80.65
Tax		12.10
Waiting Time		38.00
Over-nights		20.00
Excess Baggage		
Total		150.75

Subject to Contract Printed Below and on Reverse Side

CONTRACT

In consideration of the issuance of this contract ticket the Holder agrees with State Airlines, Inc. (hereinafter termed the Company), as follows: (over)

Agent MLG Date 2/4/45

Exhibit STA-64 (R. 9596-9602) is the *Certificate of Incorporation of State Air Lines, Inc.*, which shows that one of the objects or purposes authorized to be transacted, promoted and carried on by it is:

> "To operate, manage, control and conduct passenger, mail, express, postal and other air service and any service of whatsoever nature connected or in any way related therewith in the United States and in foreign countries and between points in the United States and foreign countries."

Exhibit STA-65 (R. 9603-9610) is the *By-Laws of State Air Lines, Inc.*

Exhibit STA-66 (R. 9611-9612) is entitled *Aviation Experience of State Airlines Employees.* It consists of two pages and discusses the State Airline personnel.

Exhibit STA-67 (R. 9613) is a map showing each of State's proposed routes separated and numbered and is Appendix C to the present petition for review.

Exhibit STA-68 (R. 9614) is a map showing State's proposed routes in relation to routes existing as of October 1, 1944.

Exhibit STA-69 (R. 9615) is a regional and topographical map showing the Appalachian and beyond region, the Piedmont and contiguous region, and the coastal and contiguous region, and the Appalachian Mountains in so far as they arose to 2,000 feet or more of altitude.

Exhibit STA-70 (R. 9616) is a map showing through rail routes in the area to be served by proposed State routes.

Exhibit STA-71 (R. 9617) is a map showing the existing air route pattern over the area to be served by proposed State routes.

Exhibit STA-72 (R. 9618) is a State Airlines Balance Sheet of February 28, 1945.

Exhibit STA-73 (R. 9619) contains the names of officers, directors and principal stockholders of State Airlines, Inc.

Exhibit STA-74 (R. 9620-9621) is the affidavit of citizenship to establish that each of the officers, directors and stockholders of State Airlines, Inc., are citizens of the United States. Page 2 of this Exhibit also contains an affidavit as required to the effect that there is no relationship between State and its officers and directors with other common carriers and other required data of this type.

Exhibit STA-75 (R. 9622-9623) contains the following letter to which is annexed a Balance Sheet of Hallgarten & Co. showing total assets in excess of $13,000,000.

Exhibit STA-75 [R. 9622]

COPY

HALLGARTEN & Co.

44 Wall Street
New York 5 June 7, 1945.

H. K. Gilbert, Esq.,
State Airlines,
Charlotte, 1, N. C.

Dear Mr. Gilbert:

In accordance with our conversations in the event that you are granted a certificate of convenience and necessity from the Civil Aeronautics Board under the applications you have on file, we are prepared to act as underwriter for raising the necessary capital.

Sincerely yours,

(Signed) Hallgarten & Co.

Exhibit STA-76 (R. 9624-9644) is entitled *Possible Diversion From Existing Carriers by Proposed State Routes and 1933 Rail Report Traffic.* This Exhibit is 21 pages in length and consists of tabulated summaries for each of State's 12 routes and shows with respect to traffic between various pairs of cities named in the 1933 Rail Report and in the September 1940 Airline Traffic Survey the number of passenger miles diverted to and from various existing routes.

Exhibit STA-77 (R. 9645-9646A) is entitled *Duplication of Existing Routes By State's Proposed Routes.* This Exhibit shows where and to what extent each of State's proposed routes would duplicate or parallel existing airline routes.

Exhibit STA-78 (R. 9647-9648) is entitled *Possible Diversion of Delta Route 54 Traffic by Six State Route Combinations*, and shows where and to what extent there would be possible diversion from Delta Route 54 traffic by six State route combinations.

Exhibit STA-79 (R. 9649-9650) is entitled *Comparison Integration of State With Existing Routes* and shows a comparison of the relative integration of a combination of six State routes: (No. 2, 3, 4, 5, 7, and 8) with PCA's seven routes and Delta's two routes.

AIRPORT FACILITIES ON STATE'S PROPOSED ROUTES

This exhibit shows that all proposed stops, except Covington-Clifton Forge, Va. and Rock Hill, S. C. either have Class 3 or better airports available or planned. However, at both of these, and other points that do not have airports suitable for scheduled operations, State has recommended to the cities that development of a suitable airport should depend on authorization of service and the type of equipment to be used.

It is State's plan to encourage, with the cooperation, as far as possible, of other carriers and airport users, the development of contract airport transportation with popular type automobiles on a basis similar to that of Post Office Star Route operators, as well as the extension of city bus services and connection of interurban buses, which at 6¢ to 10¢ per mile would substantially reduce airport transportation costs for two or more passengers. Frequent airline schedules will require additional airport trips and lower the cost per mile as well as giving added convenience.

	EXISTING				PLANNED				
City	Location	Class	Length Runway	Navigation Aids	Location	Class	Navigation Aids	Est. Project Cost	Transportation Cost to Airport *
Anderson, S. C.	4½ WSW	4	5000H	R1	Same	4	L	$230,000	75¢ est.
Asheville, N. C.	11½ SSE	3	4000H	L5					75¢
Augusta, Ga.	2½ W	4	4200H	R2,L5					85¢
Beckley, W. Va.	2-3/5 N	2	3300	L1	New	3	L,R	2,170,000	50¢ est.
Bluefield, W. Va.	6 NE				New	3	L,R	1,740,000	$1.00 est.
Bristol,Va./Tenn.(See Johnson City)	15 SW								$1.00
Brunswick, Ga.	6 E	3	4100H	R1,L5					$1.75
Burlington, N. C.	4 SW	2	2800		Same	3	L	480,000	.75¢ est.
Charleston, S. C.	10½ NW	5	7000H	R2,L5					$1.00
Charleston, W. Va.					New	4	L,R	4,180,000	.75¢
Charlotte, N. C.	5½ W	4	5200H	R2,L5					.75¢
Chattanooga, Tenn.	5½ E	4	4500H	R1,L5	New	4	L,R	1,250,000	$1.00
Cincinnati, O.	4-3/10 SE	3	4100H	R2,L5	New	4	L,R	1,700,000	.75¢
Clarksburg, W. Va.	6 E	3	3800H	R1	Same	3	L,R	830,000	.75¢
Clifton Forge,Va.(See Covington)	2 SW								.50¢ est.

AIRPORT FACILITIES FOR CITIES ON STATE'S PROPOSED ROUTES

City	EXISTING				PLANNED				Transportation Cost to Airport *
	Location	Class	Length Runway	Navigation Aids	Location	Class	Navigation Aids	Est. Project Cost	
Columbia, S. C.	2½ SE	3	3600H	R1,L4					.50¢
Columbus, Ga.	6 NE	4	4000H		Same	4	L	335,000	.75¢
Covington, Va.	6½ E	1	1900		Same	2	L	413,000	.75¢ est.
Danville, Va.	3-2/5 ESE	3	5000H	R1,L1					.50¢ est.
Dublin, Ga.	4½ WNW	4	5000H						.75¢ est.
Durham, N. C.	10½ SE	4	4500H	R1,L5					$1.50
Elizabeth City, N.C.	2 S	5							.50¢ est.
Elkins, W. Va.	2 S	4	4500H	R1,L5					.50¢
Fayetteville, N. C.	5 N	3	3200		Same	3	L	524,000	.75¢ est.
Florence, S. C.	2 SE	5							.50¢ est.
Greensboro, N. C.	8 WNW	3	4000H	R2,L5	Same	3	L	300,000	$1.00
Greenville, N. C.	1½	4	5000H						.50¢ est.
Greenville, S. C.	3-1/5 E	5	4200H	R1,L5	Bet.GC-SU	4	L	1,243,000	$1.00
Greenwood, S. C.	3-4/5 N	4	5200H	R1, L	Same	4	L	33,000	.75¢ est.
Goldsboro, N. C.	8 WNW	4	4000H	R2,L5					$1.00 est.
Hickory, N. C.	2-1/5 W	3	4000H		Same	3	L	370,000	.50¢
Huntington, W. Va.	3 W	2	2900H	R1	New	4	L,R	2,820,000	1.00
Jacksonville	7½ W	5	7000H	R2,L5					1.00
Johnson City, Tenn.	11 NNW	4	4500H	R1,L5					1.50
Kingsport, Tenn. (See Johnson City)	11½ ESE								1.50
Knoxville, Tenn.	12 SSW	4	5000H	R2,L5	Same	4	L	435,000	$1.00
Lexington, Ky.	6 W	3	4000H		Same	3	R	20,000	.75¢ est.
Louisville, Ky.	5½ ESE	4	4400H	R2,L5					.75¢
Lynchburg, Va.	6-7/10 SSW	3	4000H	R1	Same	3	R	60,000	$1.00

R. 9652

AIRPORT FACILITIES ON STATE'S PROPOSED ROUTES

City	EXISTING Location	Class	Length Runway	Navigation	PLANNED Location	Class	Navigation Aids	Est. Project Cost	Transportation Cost To Airport *
Macon, Ga.	4 ESE	4	4700H	R1,L5					$1.00
Montgomery, Ala.	2-4/5 WNW	5	5500H	R2,L5					1.00
Morgantown, W. Va.	2-1/5 ENE	2	3600H		Same	3	L,R	1,420,000	1.00
New Bern, N. C.	2½ S	3	4000H	L5	Same	3		60,000	.50¢ est.
Norfolk, Va.	6 ENE	4	5000H	R2,L					.75¢
Orangeburg, S. C.	5 S	4	5200	L	Same	4	L	530,000	.75¢ est.
Petersburg, Va.	6-1/5 WSW	4	5000H	L3	Same	4	R	70,000	.75¢ est.
Pinehurst, N. C.	5 NE	3	3500H	R1,L1	Same	3		220,000	.75¢ est.
Portsmouth, O	3½ WSW	1	2400		Same	3	L,R	960,000	.75¢ est.
Princeton, W. Va.(See Bluefield)	1-7/10								.50¢ est.
Raleigh, N.C.(See Durham)	10½ NW								1.00
Richmond, Va.	6-3/4 SE	5	5000H	R2,L4					.75¢
Roanoke, Va.	4-1/5 NNW	3	4300H	R2,L5					1.00
Rock Hill, S. C.	2-7/10 SW	2	2800		New	2	L	440,000	.50¢ est.
Salisbury, N. C.	3 SW	2	2500	L2	Same	3	L	530,000	.50¢ est.
Savannah, Ga.	3½ SW	4	5000H	R2,L5					.75¢
Southern Pines,N.C.(See Pinehurst)	3N								.50¢ est.
Spartanburg, S.C.	2½ SW	4	4000H	R2,L5	Bet.SU-GC	4	L	1,243,000	.75¢
Sumter, S. C.	8 NW	4							1.00 est.
Waycross, Ga.	4 NW	4	5000H	R1,L5					.75¢ est.
Wilmington, N. C.	3 NE	5	7000H	R1,L5	Same	5	L,R	60,000	.50¢ est.
Winston-Salem, N. C.	2-4/5 NNE	5	6300H	R2,L5	Same	5	L	240,000	.50¢

H - Hard-surfaced. L - Lighting facilities. R - Radio facilities. GC - Greenville. SU - Spartanburg
R1 - Voice Station, tower, range, or homing device. R2- Range or homing device, and tower.
L1 - Beacon only. L3 - Beacon, boundary, obstruction. L4 - Beacon, boundary, obstruction, flood. L5 - Beacon, boundry, obstruction, flood, runway contact.
* Where new airport is shown, fare estimated on basis new location, if given, otherwise on basis existing location.

Sources: CAA Directory of Civilian Airports, Dec. 7, 1944.
National Airport Plan (all $ values from this Plan). House Document 807.
American Aviation Traffic Guides, March 1945.
Official Aviation Guide of the Airways, Dec. 1941.
Chambers of Commerce.

R. 9653
Exhibit STA-80
Page 3 Of 3 pages

Exhibit STA-81 (R. 9654-9676), 17 pages in length, is entitled *Hotel Registrations and Similar Data for Cities on State's Proposed Routes Showing Communtiy of Interest.* This Exhibit contains a resume of hotel registrations in 42 cities on State's proposed routes, showing the number of registrants at hotels in each of those cities from each other city on State's proposed routes. The rank in community of interest between such cities, as shown by such hotel counts, is set forth in each case.

Exhibit STA-82 (R. 9672-9717) consists of a 36 page transcript of testimony by C. K. Brown of Davidson, North Carolina, who was a witness by and on behalf of State Airlines, Inc., in the Great Lakes to Florida Case (Docket No. 570 et al.—6 C.A.B. 429 (1945)). Dr. Brown, an economic witness, supplied testimony tending to show need for routes proposed by State in the Great Lakes to Florida Case, which were essentially the routes in this case.

Exhibit STA-82 [R. 9672]

C. K. BROWN was called as a witness by and on behalf of State Airlines, Inc., and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hill:

Q. Dr. Brown, will you please give the official reporter your full name and your residence? A. C. K. Brown, Davidson, North Carolina.

Q. Is your biography correctly set forth in Exhibit STA-A? A. Yes, sir.

Q. For the purpose of this proceeding, Doctor, have you made a study of the proposed routes of State Airlines from the standpoint of economics and public convenience and necessity? A. I have.

* * * * * * * * * *

By Mr. Hill:

Q. Doctor, were the exhibits which I have mentioned prepared by you or under your supervision or direction? [R. 9673]

A. By me or under my direction.

Q. And are they true and correct, to the best of your knowledge and belief? A. To the best of my knowledge and belief.

Q. I believe, Doctor, you have a general statement to make. Will you proceed with that? A. Yes, sir. For a twofold purpose I should like to describe certain peculiarities of the southeastern region of the United States.

First, for the purpose of defining the transportation problem, which, in my judgment, the public convenience and necessity will require to be solved, and, second, for the purpose of showing the manner in which the problem can best be solved.

The Exhibits which State Airlines has prepared contain detailed facts bearing upon these two matters, and they will

be commented upon later. For convenience, I shall use the term "the Southeast" in a rather narrow sense, namely, to refer to the area that lies south of a line from Norfolk westward to Roanoke, east of the main Appalachian Ridge, and north and east of a line from Atlanta to Jacksonville. This region contains some 125,000 square miles of territory and has a population of approximately seven and one-half million, excluding the populations of the cities that lie along the boundary lines on the north and on the south.

This area presents a peculiar transportation problem, largely because of the geographical and historical factors. To begin with, the distance beteween the mountains and the sea in this area is considerably greater than it is in the northeastern section. It runs up as high as 300 miles, possibly more, at the greatest. Within this rather wide area there have developed numerous towns and small cities, although no very large ones.

In the second place, the southern Appalachian Mountains should be contrasted with the northern Appalachian Range. [R. 9674]

The southern Appalachians are higher in altitude and, unlike the northern Appalachians, are not cut by a single stream of importance rising west of the ridge and breaking through to the east. They thus present a formidable wall through which there are no breaks. This geographical fact frustrated numerous attempts on the part of the people of this region to establish trade and travel channels across the mountain range, despite the fact that from earliest times the people that lived in the northeast, that such cross mountain connections were very desirable.

The States of North and South Carolina spent very large sums in an attempt to establish rail lines across those mountains. Although they succeeded in laying one set of rails across the mountains, they never succeeded in establishing any main trends of traffic from that direction. The result is that for a distance of some 400 miles from Lynchburg to Atlanta there is not a single rail line that crosses the mountains

at anything approximating a right angle, except the one line that I have mentioned, which is a 2-pronged line made up of branches that converge from central North Carolina and central South Carolina, and then go on to Knoxville, where they intersect the main lines running from the Ohio River down to Atlanta.

Another line veers off from Roanoke—more exactly Radford—in a southwesterly direction to the Tennessee Valley.

A third may be mentioned simply to make the statement complete. This is a line built within the present century, I believe, or completed within the present century, for the purpose of carrying coal. It runs in an almost exactly due north and south direction from Spartanburg up to the corner where Kentucky, West Virginia, and Virginia meet in the coal fields.

Q. Specifically, that is the Clinchfield Railroad, is it not?
A. The Clinchfield Railroad, yes, sir.

The 2-pronged Asheville route, in addition to being circuitous and slow, long ago became part of a transportation sys-

[R. 9675]

tem with a predominant interest in traffic moving in other directions. This is an historical fact which may probably be ascribed fundamentally to geographical conditions, but it retains an interest for us, I think, as history rather than as geography, showing, as it does, that transportation agencies are rarely interested in the development of divergent channels of traffic.

Now, as a result of the situation that I have described, the southeast finds itself largely isolated from the entire region that lies west of the mountains. To reach this region it has this one slow and tedious rail route, reaching Cincinnati and Louisville. This route is supplemented, of course, by several equally slow and equally tedious highway crossings.

You may note, I think, that the mountains do not run in a north-south direction. It is, therefore, a rather loose manner of speaking to speak of north-south transportation lines and east-west transportation lines. It seems more exact to speak of lines that parallel the mountain range and lines that cross it.

The alternatives to these slow and tedious routes across the mountains, are first to proceed northeastward to the Virginia cities or to Washington, turn an acute angle, and go westward over one of the established trunk lines to that region, or to go southward and, making another angle, to proceed northward or northwestward.

To all of us who live in this region, then, the whole territory, lying in a wide arc from Pittsburgh and Buffalo on the east all the way around to Memphis on the west is a very far away land. We have good transportation lines parallel to the mountains. We can reach Washington, New York, with ease. We have hardly any good way of getting to the cross-mountain points, yet Charlotte, for example, is almost exactly the same distance from Louisville and Cincinnati as from Washington, which can be reached by surface transportation in half the time. It is closer to these Ohio River cities than New York is to Cleveland, approximately the same distance as from New York to Pittsburgh.

[R. 9676]

Now, the existing channels of travel not only leave the Carolinas isolated from the midwest, and the midwest from the Carolinas, they leave most of the important points within the southeast area with inadequate connections among themselves in a direction at right angles to the mountains. By itself the geography of the southeast does not account for this fact. The terrain is not difficult for surface carriers, there are water courses to facilitate movements at right angles more or less to the mountains. Yet good rail routes have not developed within the area and it is thrown back largely upon the private automobile supplemented by highway busses for its east-west movement. Adequate east-west channels of traffic within the southeast have not been established, because these segments are not parts of longer east-west channels that cross the mountains to reach important midwestern centers.

Existing agencies of transportation in the southeast have a predominant interest in north-south traffic and have fos-

tered traffic channels at right angles to their main interest. The isolation of this region is reflected in traffic statistics.

We are struck with the lightness of the traffic between midwestern points and the southeast.

Now, where large traffic exists, it may be taken as a proof of community of interest and as an indication that improvements of transportation are required, where traffic is light, it may prove nothing except that there is extreme difficulty in moving from one area to another.

We fall into the habit of thinking that transportation lines are established to move persons and things where they wish to go. Superficially this position is valid enough, I think. It is quite natural that carriers desiring to extend their lines on routes already well established as traffic channels should make this particular emphasis. More fundamentally, however, the exact opposite is the truth. Cities are built where they can be readily reached. We do not go to

[R. 9677]

New York because it is there. More fundamentally New York is there because it is easy of access.

You will recall that it was outranked by Philadelphia and Boston in the early days of the country, but that when the Erie Canal was completed it assumed the number one position. We may note also that Atlanta owes its existence entirely to the fact that transportation lines seeking a route around the mountains crossed at that particular place.

Q. Doctor, let me interrupt you there for just one moment. As I gather the last portion of what you have said, it simmers down to this, does it not: that traffic goes where it can go? A. Yes, sir.

Q. Thank you. Proceed. A. The criteria that have hitherto been so largely employed to determine the need for new air service are becoming less applicable as the air transport net expands. It was natural for the first airlines to follow the major surface channels already established. So long as they did no more than this, existence was justified by reference to the volume of traffic already there. We seem

now to be entering a period, however, when the airplane must be regarded not simply as a direct competitor of surface carriers able to do better some things already being done, but as a new and radically different mode of transport, capable of establishing channels of communication and of traffic that have been largely impossible under all previous means of transport.

The railroad did this thing a century ago. All over this country we can see the evidence of the fact that this country was settled by the railroad in large degree, whereas Europe was settled before the railroad.

Between the midwest and the southeast there ought to be and there are strong bonds of economic interest that need little for their development except physical means of communication. Certain facts bearing upon that point will be brought out in the exhibits. I may mention particularly the development in the middle west of the automobile industry,

[R. 9678]

because it is of such great importance to the southeast. We have been largely dependent upon the automobile for developing our traffic channels in the past 20 or 25 years. I present then the problem as one of a region, isolated from another important region, and without important traffic channels.

As such, the problem does not call for a fractional treatment or a piecemeal development. The southeast is not simply a region to be passed over in flying from one important city to another. The solution of the problem will involve, in my judgment, routes going through on the middle west to important centers and gateways. Points that suggest themselves as constituting the minimum to be desired are Pittsburgh, Detroit, Cincinnati, and Louisville. The solution of the problem does not call for trying to reach every large traffic producing center. In fact, it calls for a minimum of duplication of existing transportation lines in the middle west. But the lines must go through to important centers and important gateways.

In the same way as the lines cross the mountains into the southeast, they should go on to the more important cities on the south Atlantic Sea Coast. Only in this way can cross-mountain connections be provided for all the important cities of the region, and only in this way can adequate connections within the southeast, at right angles more or less to the mountains, be provided.

Now, among the important points to be reached is Jacksonville. In order to reach Jacksonville certain of the routes would have to parallel existing routes, chiefly those of Eastern Airlines. The importance of Jacksonville, however, in itself and as a gateway to Florida and Caribbean traffic, dictates the necessity of reaching it as a common terminal. The fact that cross-mountain lines would parallel existing lines east of the mountains in the southern-most portions is largely a geographical fact. It is due to the fact that the coast line swings in far to the west in the southeast, placing Jackson-

[R. 9679]

ville much west of the other important points on the coast.

Now, within the southeast especially frequent stops will be required. I have indicated that there are no large cities in this whole area. Such cities as there are have developed chiefly on the basis of the automobile in the past 20 years but there are many moderately sized cities with fairly dense outlying populations in close proximity. Between Richmond and Norfolk on the north and Atlanta and Jacksonville on the South, Charlotte is the only city with as much as 100,000 population, and it barely exceeds that figure. Yet of 27 points which State Airlines proposes to serve in this region, excluding the cities that lie along the northern boundary line, and the southern boundary line, 19 have populations of more than 100,000 within a 25-mile radius, and 10 have populations in excess of 150,000 within that radius. All but two have populations of more than 60,000 within 25 miles. It is impossible to serve adequately such a region without making frequent stops. Admittedly frequent stops will slow down the over-all time between terminals, but

the time saving as compared with existing ground facilities, is so great in most instances as to make this a much smaller consideration than it would be if the case were simply that of adding air routes to well developed ground facilities.

On the northern side of the region Norfolk and Richmond present a slightly different problem, since those cities already have a fairly direct rail connection with the Ohio River. This rail connection, however, does not provide very good passenger service, so that an air route from the Virginia cities westward fits in well as a part of a general plan to connect south Atlantic and Piedmont points with important centers west of the mountains. It is simply one of several cross mountain routes that are required.

Moreover, it coordinates well with the Detroit-Jacksonville route at Roanoke, affording an alternate route from

[R. 9680]

Norfolk and Richmond to Pittsburgh and thence to Buffalo and other lake cities.

A route westward from Norfolk should reach Cincinnati as a gateway not only to Chicago but to St. Louis. It should provide an alternate route from Norfolk to Detroit and Pittsburgh via Roanoke, the direct route, of course, being by way of Washington and Norfolk.

Now, if I may say that the public necessity and convenience require an instrumentality for carrying out the solution of such a problem, I should like to add that one's understanding of a problem and one's proposals for solving a problem give an excellent idea as to what success one would have in dealing with the problem. There is a great deal of history to substantiate the proposition that established transportation agencies with strong vested interests in certain channels of traffic hardly ever have a lively interest in encouraging a comparable development of divergent traffic lines, even though such a development may be equally in the public interest.

The railroad history of the southeast will substantiate that and many other instances might be cited.

No one, of course, desires to short-haul himself or can reasonably be expected to do so. It is largely because of this tendency that the competitive principle has been preserved in our economy and assigned such a large role to play.

If this problem, then, is understood and well outlined, it seems to me that the public convenience and necessity require that it be undertaken by some company that would make it its main business to solve it.

Of course, the whole situation confronting air transportation at the present time is characterized by extreme fluidity, and in these circumstances, just as was the case a century ago with the railroads, almost everyone outlines his projects in almost every direction, confusing different transportation

[R. 9681]

problems and mixing divergent interests in the same program. This is natural, I think, in times such as these, but I do not think any frenzied attempts at control over new routes should take the place of well planned solutions of well defined problems.

Q. Do you feel, then, Doctor, that as a result of this proceeding a route should be certificated for established carriers that already have predominant interest in their present traffic? A. It is my judgment that the interest of carriers with predominant channels of traffic in another direction would militate strongly against their solving this problem adequately.

Q. I take it, then, that even more so would be the case of a transportation company having its interest on the ground, so to speak? A. Yes, sir, I think equally so at least.

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4. The direct testimony and cross-examination of State Airlines, Inc., witnesses at the hearing June 19, 1945. Record Vol. 6.

[R. 3399]

HENRY K. GILBERT was called as a witness on behalf of State Airlines, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hill:

Q. Mr. Gilbert, will you please give your full name and business address? A. Henry K. Hill, Jr., State Airlines, Inc., Charlotte, North Carolina.

Q. What position do you hold with State Airlines, Inc.? A. President.

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[R. 3405]

Q. Mr. Gilbert, is there anything you wish to add to what you have already said?

* * * * * * * * * *

A. I would like to mention that our cost figures include the use of our own passenger agents. One reason for this is that it has been State's experience on its non-scheduled operations that its own agents were necessary in order to properly service passengers and trips. We have operated both with our own full-time agent and with agents who were employees of fixed base operators, paying part of their salaries. The latter arrangement was entered into at both Charleston and Columbia with the cooperation of the fixed base operator who advised State at the time that in view of similar prior arrangements with Delta, the service would not be satisfactory. Our experience bore this out, although naturally this representation was better than none at all.

Now, on the subject of Exhibit 58, note that in our operations plan we have planned on instrument operations. This particular exhibit shows weather conditions on a contact and instrument and closed basis at a number of State points.

We feel that this exhibit indicates that dependable operation would require instrument operation.

In view of new developments in navigation it can't be definitely stated at this time what additional navigation aids would be required and as to how soon or over how much

[R. 3406]

of the proposed routes instrument and night flights can be conducted.

In 1941 State had a weather survey made to determine the practicability of contact operations by Mr. Irving P. Krick, head of the Meteorological Department of the California Institute of Technology at Pasadena, California. Mr. Krick concluded that contact schedule completion would be about 90%.

However, State's experience in non-scheduled operations has shown that the weather may be as little as 60 to 75% of the time contact at all points on a route within the duration of any flight. Furthermore, ground fogs at points in the mountains and instrument smoke conditions prevail frequently until 10:00 o'clock A.M., or later, at Charlotte during most of the winter. During the summer months instrument conditions are common due to clouds over the mountains from 4:00 o'clock in the afternoon on.

Likewise, on almost any clear summer day on trips of 100 miles or more throughout the Piedmont conditions of reduced visibility occur.

Furthermore, from State's experience, weather observations at specified points are frequently no indication of the weather that has to be traversed between these points. Both Asheville and Knoxville have reported ample contact conditions, yet instrument conditions existed between the two. State, during the summer, has had a plane tied up as long as two days at Knoxville for this reason, it being deemed unsafe to operate on instruments in single motored equipment across the mountains.

State, therefore, has concluded any practical plan of

[R. 3407]

operating on schedule over its proposed routes must include instrument procedures and ample meteorological personnel.

If State uses ultra high radio repeater stations, it may include automatic weather reporting equipment at mountain locations.

Q. Is there a very marked variability of weather conditions between points in the Southeast which are even fairly close together? A. Yes, at certain times.

Q. That is caused by a meeting of the cloud masses over the mountain and those from over the sea? A. Yes.

Q. Meteorologically speaking. Have you anything else to add? A. No. That concludes my statement.

Mr. Hill: Cross-examination.

Cross-Examination by Mr. Lyon:

Q. Mr. Gilbert, how many people are employed by your company at the present time? A. Approximately ten.

Q. Are any of them full-time employees? A. Yes.

Q. How many? A. About six.

Q. Can you name them to us, please? A. I cannot give the names of all the men we have down at Charlotte at the present time. Added two or three since I left, but there is

[R. 3408]

M. L. Gilbert, Glenn Shaver, myself, and I believe three mechanics whose names I don't recall.

Q. M. L. Gilbert is your wife and Secretary of the company? A. Yes.

Q. And Glen Shaver is your pilot. Is that right? A. That is right.

Q. Do you have any airplanes at the present time? A. Yes. I have three.

Q. What are they, what kind? A. Cessna; single-motored Cessna.

Q. Your only base of operations is at Charlotte, North Carolina? A. That is right.

Q. And it has been during all of your operations? A. Yes.

Q. What other type of business have you been engaged in besides the non-scheduled operations?

* * * * * * * * * *

A. That is all we have been in.

Q. You have no other activities such as sales or flying instruction, or anything like that? A. No, nothing else.

Q. And have you been operating these Cessnas in your non-scheduled flying operations? A. Yes.

Q. Will you refer to STA-60, page 6. There is a statement made on that page, about the last paragraph, that

[R. 3409]

State Airlines, Inc., has not operated at a profit. Now, just what do you mean by that, Mr. Gilbert? You mean that has been a nonprofitable operation all during the time of your existence? A. Yes, although as it is otherwise explained—stated in this same exhibit we commenced our operations at very low rates and in view of the experience we obtained as we operated with the equipment to be considered, we raised our rates and we were—we have consistently improved that position, but it hasn't resulted in profit for the operation.

Q. Your non-scheduled operation has never been conducted at a profit. Is that correct? A. Well, only intermittently.

Q. What rates are you now charging for non-scheduled operations? A. Those are shown in Exhibit STA-62.

Q. That is at the rate of 12¢ a mile deadhead or single passenger rate, and 16¢ a mile group rate for two or three passengers. Is that correct? A. Well, that is part of it, yes.

Q. Are those rates higher or lower than any other competitors that you have in this vicinity in this part of the country? A. They are lower to the best of our knowledge.

Q. As I understand it, State Airlines, Inc. was organized principally for the purpose of getting into scheduled opera-

[R. 3410]

tions, becoming a certified carrier. Is that correct? A. That is right.

Q. That was your main objective? A. Yes.

Q. And the only reason you have been flying these non-scheduled is that you haven't so far been able to get a certificate from the Board. Is that correct? Sort of stop-gap,

you might say. A. Well, no. We put on the operations not only because we haven't got a certificate from the Board, but also because we wanted to get experience operating and find out what the public requirements were.

Q. Will you refer to Exhibit 72, please. The balance sheet of the company. What figures there represent the three Cessna airplanes that you spoke of? A. Those are personal property. Those aren't represented in the balance sheet.

Q. The company doesn't own them. A. No.

Q. You own them personally? A. Yes.

Q. So far as the company is concerned, it doesn't own any aircraft at the present time. A. I lease them to the company.

Q. That has been your arrangement all during the history of the company? A. The company has owned its own planes.

Q. Why do you adopt that system rather than have the company itself own and operate the planes? Is there any

[R. 3411]

particular reason for that? A. Well, I would rather assume the liability for the ownership of the company than—of the planes rather than have the company do so.

Q. What is included there in the sum of $7,548.06 under the heading of Pre-operating expenditures? A. Well, that includes number of expenses that we were put to when we first started. We ordered two planes from the manufacturer and they were delivered to us. They had been licensed, both by the manufacturer, and approved by the manufacturers, the motor and aircraft by the CAA, but we felt they were unsafe to fly, consequently we rebuilt them ourselves at our own expense. That is what it cost us primarily.

Q. And what is included in the sum of $19,158.48 under the heading Extension and Development Projects? A. Those are expenses on hearings and matters of that sort.

Q. That is actually money that the company has paid out in the various proceedings that you have been engaged in before the Civil Aeronautics Board, including the Great Lakes-Florida Case and others? A. That is right.

Q. And also the present case? A. And the Atlantic Seaboard case and a feeder investigation.

Q. Referring to the liability side of the balance sheet, what is meant by the Long-Term Debt, $22,580.29? A. That is loans that have been made to the company that are payable on issuance of a certificate.

[R. 3412]

Q. That is unsecured loan? A. Yes.

Q. Who holds that debt? A. Stockholders.

Q. What is meant by the term Premium on Capital Stock in the sum of $27,901, shown as a premium under capital stock? A. Well, that is the amount above the par value of the stock, the stock was issued for.

Q. Do you mean by that that of the 26,947 shares outstanding there has actually been paid into the capital $54,848. Is that correct? A. Yes.

Q. And of that sum all that is really left in the form of actual assets are the $4,341.58 cash and the operating property and equipment as shown on the asset side of the ledger. Is that correct? A. Yes. It isn't a question of what is left, though, because as we have needed money for various matters, such as, this proceeding, stockholders have furnished additional funds. This i explained, also, in my statement.

Q. As I understand it, the financial strength of your company is based not so much on your present assets as it is on the financial responsibility of your stockholders. Is that correct? A. Yes, to a large extent.

Q. And the willingness of those stockholders to advance money to the company? A. That is right.

[R. 3413]

Q. What arrangements have you made for the issuing of additional stock in the event that a certificate is awarded to your company? A. Well, if a certificate was awarded, we would have a recapitalization.

Q. Your present authorized capital is limited to $50,000. Is that correct? A. No. It is limited to 100,000 shares.

Q. One hundred thousand shares of what par value? A. One dollar par.

Q. And in the event a certificate is awarded, you plan to amend your articles of incorporation to include how much authorized stock? A. It would depend on whatever was needed.

Q. Have you estimated how much additional capital you would need to operate the routes that you propose in this case? A. Yes.

Q. How much do you estimate you will need? A. Somewhat over three and a half million dollars.

Q. How do you propose to secure that money? A. Through an underwriting.

Q. Will you explain just what your proposed plan of underwriting is? A. Well, through—we have an arrangement with Hallgarten & Company, who have agreed to underwrite the amount of money required to finance the proposed operations.

Q. Will you have a witness from that company here to

[R. 3414]

testify in this hearing? A. Yes, he is here. But, also, I would like to add that a number of the stockholders have indicated themselves that they are interested in purchasing stocks in substantial amounts if a certificate is issued.

Q. Can you tell us anything about the financial responsibility of the present stockholders of the company? A. They are worth in the neighborhood of several millions of dollars.

Q. That is rather a general statement. Can you give us anything more specific with reference to any of them? A. We have statements of net worth from about half a dozen of them to the effect those half dozen are worth at the minimum about $2,000,000.

Q. Do you have any of those in writing? A. Yes.

Q. Are they shown in your exhibits anywhere? A. No.

Q. Can you give us the names and addresses of those half dozen that you refer to? A. Yes. W. W. Brinckerhoff, H. D. Gilbert, myself, P. H. Eickelheimer, H. W. Klotz, H. Booth, J. Kotula, A. Pagenstecher.

Q. Do you have any arrangements for equipment trust financing of any kind? A. We have discussed that with both

a local Charlotte bank and a New York bank with whom we now do business, who said they would be agreeable to handle.

Q. How much of your money do you propose to raise [R. 3415] in the form of equipment trust loans and how much in the form of additional capital through the sale of stock? A. Well, we want to raise the minimum amount in equipment trust loans. In other words, we would prefer to have as much of the money raised as possible that we need through the sale of stock rather than equipment trust.

Q. You estimate that your total requirements will be $3,500,000, including everything. Is that right? A. Yes. Well, no, little more. That doesn't include working capital.

Q. How much working capital do you estimate you would need? A. We would have enough, say, for at least three months' operation.

Q. How much would that be? A. That would be approximately a million dollars.

Q. But you would want $4,500,000 altogether. Is that right? A. Yes.

Q. According to your present thinking along financial lines, how much of that $4,500,000 do you propose to raise by the sale of stock? A. Well, I think that we would—of course, it would depend somewhat on the equipment, but we would prefer to raise the entire amount that is needed through the sale of stock. In other words, the whole amount because, for the reason that we foresee that there will be new equipment coming out and that there will be considerable—there will be a considerable expansion of service beyond what [R. 3416] we have estimated in the way of our traffic here over these proposed routes and that we will shortly have to go to work adding equipment increasing the size of the operation. We think that what we show here is a pretty conservative estimate of the amount of traffic that is going to be produced, and consequently rather than to get tied up to the very maximum on equipment trust certificates to start out with,

it would be better to be in a liquid position so that we could go ahead and get the new equipment in order to expand our operation, say, one month after we had been operating, we would find need for doubling the operation, so we wouldn't have to go through another stock issue at that time.

Q. In other words, any plans for equipment trust financing will be simply to expand the activities of the company and not the initial activity. Is that right? A. Yes. We would prefer to be able to expand the activities with simply trust issue once we are started, rather than go through another underwriting right away.

Q. As I understand it, Mr. Gilbert, your proposed routes are based largely upon your experience in your charter operations during the last five and a half years. Is that correct? A. Well, it is based on that and also numerous surveys that we have made.

Q. Have your charter operations been conducted over any particular routes? Can you give us some idea of what the greatest demand for travel has been in your non-scheduled

[R. 3417]

operations? A. Yes. That is actually shown in Exhibit STA-22, the need for routes as shown by 45 months actual operating experience.

Q. And those are actually the specific flights that you have flown during that entire period? A. Yes.

Q. Is that the last 45 months? A. No, that is 45 months up through, approximately--I think it goes into December. I can look it up for you.

Q. December of last year? A. That is right.

Q. As I read those figures, Mr. Gilbert, it looks as though most of your travel has been on your proposed routes Nos. 1 and 3. Is that right? A. Well, on page 2 of Exhibit STA-22 the need for the routes as shown by request trips and inquiries out of Charlotte shows that Route 8 is the highest, Route 3 is second, Route 1 is third, and Route 9 is fourth.

Q. Does that table purport to include the actual miles you have traveled or does it include the request and all other inquires about those particular routes? A. It includes both.

There is a summary on that page showing the actual trips that we have taken in terms of number of passengers, passenger miles, ship miles, average trip length and average passengers per month.

Q. Would you say that that page of Exhibit STA-22 would indicate fairly the public convenience and necessity for travel over the proposed routes which you are proposing in this [R. 3418] case? A. Well, I wouldn't say so entirely; because the travel that this represents is only out of Charlotte. It doesn't represent travel out of other points on those proposed routes.

Q. Would it represent the community of interest of Charlotte with the various cities on your proposed route, or would it tend to reflect the community of interest of Charlotte? A. Yes. I would say yes.

Q. Would that be true of the Piedmont area of North Carolina and South Carolina? A. Yes, I would say so. We based our applications and revisions in our applications on these—on this route. For example, we had originally included Shelby, North Carolina on that Route No. 3 going over to Asheville and we developed so few requests for Shelby that we omitted it in our revised applications.

Q. Then, your applications in this case are based to a large extent on your actual experience in charter operations. Is that correct? A. Absolutely. That is one reason we propose using DC-3's because we have had the experience that plane we had was never large enough. We had to keep on getting larger planes. We ought to have for our non-scheduled operation larger than what we have. Furthermore, having been through the headaches of proving aircraft that were supposed to be suitable for private, and you might say semi-commercial operation, we want to get equipment we know [R. 3419] will stand up and deliver the goods.

Q. Along that line, Mr. Gilbert, have you made any investigations or any plans looking toward the use of the Beechcraft 18-S which has been proposed by some of the applicants in this case? A. Yes.

Q. Will you tell us what your opinion is with reference to the practicability of that plane or planes of a similar size in the type of operation which you are proposing? A. Well, in a feeder investigation we made comparative analysis of every plane from a Cessna on up—Cessna four-place plane on up to a CW-20, and when we originally started we considered the possibility of operating single-motored planes on a contact basis. We discarded that. We then considered Beeches and we discarded those. We considered Electras. We considered Lodestar. And the net result is that we have our cost in here (indicating) on the DC-3.

Now, specifically regarding the Beech, we don't feel that it would have the passenger appeal that it is necessary to have. We had numerous occasions in the operation of our non-scheduled service when PCA was operating Route 51, making connections with them at Hickory, and although our planes are very small and tiny, at the same time we used to get quite a few complaints from passengers about riding in their 247 D Boeing, and we have had other comments by passengers about the lack of comfort in Electras. There hasn't been any particular complaint about Lodestars. But

[R. 3420]

we feel that the passenger has got to be reasonably comfortable. You have got to be able to give him a pretty smooth ride in order to attract his business, and whereas we feel that the 18-S Beech would be—it is a fine executive plane, private aircraft, but you really couldn't develop any considerable movement of passengers. We have got to give them a plane that he is used to riding in.

Q. Do you think the public has been used to riding in these big planes over the trunk carriers so that they will not be satisfied with a smaller plane? A. No. It isn't the size of the plane that matters. It is the individual comfort. It is the amount of room that one passenger has in the plane. That is what counts. In other words it doesn't make any difference if it is 40 or 50 passengers. The passenger doesn't care as long as he is individually comfortable.

Q. Do you think the element of safety enters into the situation? That is, do you think that the passenger would be satisfied with a single-motor plane? A. No, no. We know that.

Q. What is your opinion in regard to that? A. Passengers are sold on the idea of twin motor operation and we know that there are a number of people that are friends of ours that would like to ride with us but won't because we are operating single motored aircraft.

Q. What is the passenger capacity of your present Cessna plane? A. Three passenger.

Q. From your experience with the operation of your

[R. 3421]

single motor, three-passenger plane, would you say that the public would be satisfied with such a plane for scheduled operations? A. Well, it is a question of comparisons. If the best transportation or if the only air transportation that is offered over a particular route they need air service is single-motor planes, there will be some people that will ride in them.

Q. Do you think that the DC-3's that you propose can be operated economically on routes of the length that you propose? A. Absolutely.

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[R. 3425]

Cross-examination (Cont'd) by Mr. Moore:

Q. Mr. Gilbert, you were an applicant in the so-called Great Lakes-Florida case, were you not? A. Yes, sir.

Q. Referring to your present Exhibit 67, I will ask you to point out which routes of the 12 applied for in this case were not included in the Great Lakes—in your application in the Great Lakes case? A. Louisville to Norfolk.

[R. 3426]

Q. What is the number of that route? A. Five.

Q. Louisville to Norfolk, 5. A. The portion of the New Bern-Chattanooga Route No. 9 that runs between Charlotte and Chattanooga.

Q. The portion between Charlotte and Chattanooga of that route? A. Yes.

Q. No. 9? A. The portion of Route No. 11, Norfolk to Montgomery runs between Norfolk and Columbia.

Q. Norfolk and Columbia? A. Route No. 12 between Savannah and Montgomery.

Q. Route No. 12 in its entirety? A. Yes.

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[R. 3427]

Q. Well, I think you answered this question, but in that very same connection may I ask you to state whether or not you actually contemplate service to any community where the traffic volume in the opinion of that community doesn't justify an airport sufficient to accommodate a Douglas DC-3? A. Yes, we do anticipate that type of traffic. In Exhibit STA-57 you will see a description of the characteristics of the Douglas Skybus and the Lockheed Saturn as it would——

Q. (Interposing): Just a moment, now. What is that, 57? A. Fifty-seven.

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Q. The Douglas Skybus and Lockheed Saturn, Mr. Gil-

[R. 3428]

bert, are in the paper stage, only? A. That is right. But you will see on page 2 there of Exhibit 57, in the last paragraph, that on the load factors estimated in Exhibit STA-31, the Skybus would be capable of utilizing runways as short as 2,000 feet on ten of the twelve proposed routes, and still carry the required payload. Of the remaining two routes, the Skybus would require runways averaging only 2,500 feet, at sea level, for one, and runways averaging only 3,000 feet for the other. So that there is equipment coming along that will enable us to operate at those points even in many cases with the fields that they have.

Further, the Skybus is not a paper airplane. They have had a version of the Skybus flying since April.

Q. Do you know when any commercial delivery is likely to be made? A. No. There is no way of telling that.

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Cross-examination (Cont'd) by Mr. Moye:

Q. Mr. Gilbert, do these additional routes which you present in this case and did not present in the Great Lakes [R. 3429]
Case change your basic plan of operation any from what it was in that case? A. No.

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[R. 3433]

Q. Would you characterize an operation between Wilmington and Louisville as a local operation? A. Yes. The length of the route does not necessarily determine the character of the operation.

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Q. Mr. Gilbert, is the main purpose of your proposed service to provide a hitherto unfilled need for trans-mountain transportation? A. That is part of it.

Q. Is that the main part of it? A. That is the principal part. It is both to provide service between points that [R. 3434]
have no service operating principally in directions at right angles to the mountains where there is poor ground transportation, and also to serve points that do not now have any air service.

Q. Keeping that in mind, why did you propose to extend your Routes 1 and 10 south beyond Savannah into Jacksonville when there are two carriers presently operating between those points? A. One and Ten into Jacksonville?

Q. One and Ten. And One from Columbia to Savannah. A. Well, as a matter of fact, we filed for Route No. 1. We were the first company to file for that route. We filed for that route in 1941, and that was the basis of the Great Lakes case, and we went into—so that we had filed for that route

before Eastern operated any service between Savannah and Columbia, and then when Eastern was given service into Columbia they were given service on the basis that Columbia was supposed to be direct service to New York and Washington, not that they needed any local service to Savannah.

Q. Well, does Columbia or doesn't Columbia need local service to Savannah? A. It does.

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[R. 3435]

Q. Let me ask you this general question: Will any part of your proposed system stand on the local operations alone? A. You mean, any two adjacent points, such as, Columbia to Orangeburg?

Q. I won't pick any two adjacent points. I will pick them

[R. 3436]

in a general area. You have defined three general areas; that west of the mountains, that immediately east, and the seaboard portion. Will the seaboard portion of your proposed system stand alone? A. That all depends on what you mean by standing alone. We have shown a certain amount of traffic. We have shown in some cases what we would require. It would depend on what we were awarded. In other words, if you want to go in—say, a company is operating and will stand alone if they don't have more than, say, 40¢ or 50¢ mail pay; then, they will stand alone. It all depends on what your definition of standing alone is.

Q. All right, I will give you this definition. You use the Examiner's figure of 25¢ per mile mail pay in the Local Field Investigation, then would the seaboard portion of your proposed system stand alone? A. I think there is a pretty good chance that it would, but it would have to be analyzed and recalculated. We have shown what the cost of operation would be on—not only on all 12 routes, but we have shown them on six different combinations of routes.

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[R. 3437]

Q. Turn to Exhibit 22, please, page 2, the table at the top of the page shows that your Route 3 and Route 8 are the

most heavily traveled of your proposed routes. Is it a fact that Route 8 is the most heavily traveled due to the Columbia-Charlotte traffic over that route? A. No. On page 10 of that exhibit you will see that more passenger miles are represented by Charlotte-Charleston traffic.

Q. As I understand your rate system, round trip for three passengers costs approximately 5⅔¢ per mile. Is that correct? A. Approximately.

Q. That is approximately the present, the existing airline schedule fares prior to two or three months ago. Is that not correct? A. Approximately.

Q. And during the 45 months of your charter operation you succeeded in getting 4616 passengers to and from all points on your proposed system. Is that correct? An averaged of 1.1 passengers per day? A. Did I say 4600?

Q. 4616. A. No. There is 1463 there on page 2 of STA-22.

Q. If you get a return passenger from a point to which you have taken a passenger, do you require the going passenger to pay the full price for your return? A. Well, that would depend. It varies. If we take a passenger over to a

[R. 3438]

point on the basis that there is another passenger coming back, then we allow them to split the fare but if we pick up the other passenger after the first one has been discharged merely because the plane happens to be there, then they both pay the same price, full rate.

Q. Not all of these passengers whom you show in STA-22 would receive through plane service over your proposed route, would they? A. The exhibits show that if the route shown had been operated by State 52% of the passenger miles produced under similar conditions would have traveled beyond State's proposed routes of 13 presently certificated airlines. This would far exceed any diversion from these companies that State would have.

Q. I was referring solely to intra-system traffic, to and from points on your proposed system. For instance, a passenger between Roanoke and Charleston, South Carolina

would not receive through plane service over your proposed system, would he? A. No, not unless a plane operated over both those routes.

Q. Is it your opinion that 1.1 passengers per day who did not use scheduled airline transportation represents a large unfilled need for scheduled airline transportation? A. No. The record in this—the record in this exhibit, STA-22 is—the purpose of that exhibit is several-fold, and is described on page 1 of that exhibit.

Q. STA-16. It is true, is it not, that within the past several months the scheduled airlines listed have substan-

[R. 3439]

tially reduced their fares, which would substantially reduce also their rates per mile? A. Well, these fares are based on March, 1945 fares, so the rate per mile is based on what they were in this year, March of 1945 as far as was possible. That is because—notice there are a couple fares for 1941.

Q. STA-18. What is the purpose of this exhibit? A. Well, this exhibit shows that lack of adequate rail facilities have necessitated the use of highway transportation to a great extent and States' proposed—to be served by State Airlines.

Q. Page 16 of STA-22. Why didn't you include Lumberton and Athens, Georgia on your proposed routes? A. Athens, Georgia.

Q. Yes, Athens, Georgia. A. We don't have a route that goes near Athens, Georgia. And we omitted Lumberton because we receive so many combined calls and the community of interest was so strong between—to Fayetteville and Southern Pines, Pinehurst that we felt that it would slow the service down too much to pick up Lumberton in addition to those points, and it wouldn't be as much in the public interest to include Lumberton instead of those points. That is, for the number of schedules that we show operating. With additional schedules, though, we undoubtedly, would put service into Lumberton.

Q. STA-23. Doesn't this exhibit show that Eastern's Route 5 between Charlotte and Greensboro lay directly over

well established surface transportation facilities, which it
[R. 3440]
succeeded in the past in getting the great bulk of traffic between those points, whereas State Airlines from Charlotte and Columbia, and Delta from Columbia to Charleston did not fly over such well established surface transportation? A. No, it doesn't because the fact that there are well established surface facilities may mean a greater total number of '33 rail passengers, for example, than you had, say, from Charlotte to Columbia or from Columbia to Augusta, but the percentage of the '33 rail business that Eastern did not—between Charlotte and Greensboro was infinitesimal compared with the percentage, say, that Delta did between Columbia and Augusta.

Q. STA-24. This exhibit is simply to compare this area with other areas of the country, is it not? It isn't to illustrate the predominance of local transportation within this particular area, is it? A. Yes. It is to show that there is more local transportation within this area than for the country, as a whole. Stated at the top of the page.

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Q. STA-32, page 2. That is yours, is it not? A. Yes.

Q. Is this first column air mail postal receipts or all
[R. 3441]
postal receipts? A. All postal receipts.

Q. Does the third column indicate that State Airlines would expect to get that proportion of all postal receipts? A. Yes, after—of course—that is transferred into air mail further on. In other words, only certain percentages of all postal receipts that develop into air mail.

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By Mr. Borroughs:

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[R. 3444]

Q. Do you contemplate issuing any stock dividend if the certificate is granted? A. Well, the actual arrangements

after a certificate is granted would be made subject to our financial requirements and for the routes that might be awarded and according to the conditions at the time and the participation of the stockholders, and so on.

Now, today a great many of our stockholders—our largest stockholders are in the Army and the Navy and the biggest stockholder is overseas in Europe right at the present time, and consequently he may be back and we will have to go into those matters upon the issuance of a certificate.

Q. Is he one of the gentlemen named as holding stock options? A. Yes.

[R. 3445]

Q. Which one is he? A. Klotz.

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[R. 3446]

Q. Did you get an Army contract? A. Well, we were given an authorization by the Army but it didn't develop into any traffic. As far as I know, we were as a matter of fact the only non-scheduled operator in the country that was authorized to carry personnel for the Air Transport Command.

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[R. 3447]

Q. Now, under Deferred Charges, Extension and Development Projects; what does that mean? A. Well, that is direct expenses on hearings and matters of that kind.

Q. That doesn't have any relation to the other item of $43,000 that you were talking about? A. Well, no, no relation except that the company is incorporated for one purpose, and everything that is done has been for that purpose.

Q. Actually the company has no assets whatever, has it? A. None except what is shown as cash and accounts receivable.

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Q. In response to a question by Mr. Lyon about the present ownership of the planes, you said that you owned

them and leased them to your company, as you would rather assume the liability of ownership of the planes than have your company do it. Would you explain that statement? [R. 3448]

A. Yes. The way we have operated has been to carry complete insurance. We have carried probably a higher degree, for example, of insurance than any other non-scheduled operator on the aircraft and on the passengers and property liability, and so on, so in order to operate as safely as possible. Now, I have assumed the responsibility of the ownership of that insurance so that it would not cause a loss to the company involving other stockholders. In other words, I am taking it on the chin myself.

Q. Consequently, I assume from what you say that if your company owned the planes, your balance sheet would look much worse than it presently does. Is that correct? A. How do you figure that?

Q. I understood you to say that you assumed that responsibility rather than have your other stockholders lose the money that would be necessary to pay out for this insurance that you carry. A. Well, of course, you are due to get the insurance back as a result of the operation of the planes, but on account of the—of the high standard of operation that we have tried to put on, it causes—it isn't generally a profitable operation, and rather than eliminate any operation or rather than cause any loss to the company I have handled it myself.

Q. In other words, you have absorbed that much of the company's operating deficit by owning the planes yourself? A. Yes.

Mr. Burroughs: That is all.

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[R. 3449]

By Mr. Mills:

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[R. 3451]

Q. You stated that you were planning to use the DC-3 plane because your experience indicated that you needed

larger planes than you were operating. Is that correct? A. No, not only that,——

Q. (Interposing): Just a minute. Didn't you state that in your direct testimony? A. That may be one of the things that I said.

Q. Well, that was one of the reasons, wasn't it? A. Yes, probably one of the reasons.

Q. Well, now turn to Exhibit STA-22, page 2. A. In other words, we found such a rapid growth in our traffic we continually had to go to larger equipment and our estimates show the needs for that size aircraft, traffic estimate.

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[R. 3464]

Q. In regard to the item of Unappropriated Earned Surplus, do you know whether the Uniform System of Accounts provides for that being carried as a liability rather than as an asset? A. No, I do not.

Q. Well, I show you the form of balance sheet of the Uniform System of Accounts and ask you if you will check that?

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[R. 3465]

Q. That appears, does it not, under liabilities? A. Yes.

Q. And, as a matter of fact, this item Unappropriated Earned Surplus instead of appearing under the assets as a plus figure should appear under the liabilities, should it not? A. Well, it constitutes a loss. Just because it is under assets, there is no attempt to conceal whatever. We described what it includes and I will tell you again if you want to hear it.

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[R. 3467]

You stated that there were two airplanes that you owned personally that were now under lease to the company. Is that correct? A. No. I said that I owned three airplanes. I lease them to the company. At present only one of those planes is leased to the company because the other two are

not in flying condition. Since their purchase they have not been in flying condition.

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[R. 3471]

Q. You have been flying right along this year? A. Only, to a very minor extent.

Q. Isn't it true that you haven't flown any charter trips from Charlotte since last October? A. No.

Q. Do you know how many trips you have flown since last October? A. Not offhand.

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Q. What is your estimate? A. My estimate is about a dozen, maybe 50. It is pretty hard to tell. I can't remember offhand.

Q. Has the company had these planes of yours all that time? A. No. It hasn't had any planes all the time. I bought one—one I bought in March, the other just recently. Our pilot has also had planes. We have taken trips with his plane.

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[R. 3472]

Redirect Examination by Mr. Hill:

Q. Mr. Gilbert, was State organized for the purpose of sometime becoming a schedule operator and has it not been willing to operate at a loss a reasonable amount to gather that experience which would assist it in going forward with its schedule applications? A. Absolutely.

Q. Have you in your summary somewhere given various of the reasons which go to make non-scheduled operations difficult and seldom lucrative? A. Yes, we have on page 9. On page 9 of Exhibit STA-60 shows that there are seven particular difficulties with non-scheduled operations, and in addition to that CAA has made a survey of non-scheduled

[R. 3473]

operations throughout the United States, and they found that there were very few non-scheduled operators that were ex-

clusively engaged in that type of work that had been able to make any money at it, and we realized this when we started, that there were big handicaps to face, but we started non-scheduled operations in order to prove the need for the scheduled operations.

Q. And, so to speak, you were willing to "take the rap"? A. That is right exactly.

Q. Mr. Lyon asked you about your initial financing, which you stated so far as possible you thought should be done at the beginning through stock. Do you consider it sound business that a company should begin its business with the smallest possible load of debt? A. Absolutely.

Q. I made a note in regard to Routes 1, 3, 8 and 9 about which you were questioned I think by Mr. Lyon. It is a fact that these routes all pass through Charlotte, is it not? A. Yes.

Q. I might add another statement, that under that other question, that there are a number of companies that propose aircraft which are not entirely suitable. I believe that there will be better aircraft made so that if they go into a big equipment trust program they may find the need for another stock issue almost immediately.

Q. Now, did you at one time make a survey, Mr. Gilbert, among prospective passengers which indicated that the prime

[R. 3474]

consideration was safety? A. Well, we took it as a foregone conclusion that safety was the most important consideration.

Q. Did you question Mr. Munro in this proceeding concerning the type of plane which he considered suitable for operation on Route 51? A. Yes.

Q. What type of plane did he designate? A. DC-3.

Q. Did Douglas announce only last month that it was resuming active development of the Skybus? A. I am not sure that they did. They stated they were resuming manufacture of ships similar to the DC-3's and that—they notified us to the effect that they would advise us definitely regarding the Skybus as soon as possible.

Q. You don't have any direct knowledge about their active development of the Skybus? A. I am reliably informed that the ship in this category was flying a year ago last April.

Q. Now, Mr. Gilbert, if your company should be granted a certificate by the Board, would it be the purpose of State Airlines to maintain its books strictly in accordance with the regulations of the Board and see that each little item fell in its particular niche? A. Yes.

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[R. 3475]

By Mr. Lyon:

Isn't it a fact that during the entire period of the existence of your company you have been really living on your capital, so to speak, and that you have not conducted any profitable operations during the course of the existence of the company? In other words, you are gambling on the possibility of getting a certificate from the Board. Isn't that true? A. Yes. Well,

[R. 3476]

of course, it is certainly a gamble to a certain extent, although we feel that those routes are definitely going to be flown sooner or later, and that gamble is restricted as to whether we are authorized to operate them or somebody else.

Mr. Lyons: That is all.

Redirect Examination by Mr. Hill:

Q. I don't like that word "gamble". Let's state it differently. Is it fair to state that you have lived, breathed, eat and slept this air service for some years now? A. Yes, absolutely.

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[R. 3477]

C. K. Brown was recalled as a witness on behalf of State Airlines, Incorporated, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

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[R. 3479]

Q. Doctor, just a few general questions before you are cross-examined.

The routes here proposed by State Airlines predominantly are at right angles to the Appalachian Mountain Range, are they not? A. For the most part they are.

Q. And are the established transportation agencies both in the air and on the surface predominantly laid out parallel to the mountain ranges? A. Yes, sir.

Q. And historically, Doctor, are established transportatin agencies usually interested in the development of diver-

[R. 3480]

gent channels of traffic? A. As a general rule they are interested, I think, in preserving established channels, and more interested in using cross lines for feeders than they are in developing them as independent channels.

Q. What would you say then as to whether such service as that proposed by State should be undertaken by an established airline rather than by State? A. Well, new companies at least have no fixed interest in established channels to protect, have no reason for avoiding short hauls themselves.

Q. In other words, they have a fresh start? A. Yes, sir. They start without any interest that ought to be developed or protected.

Q. Where traffic is light, Doctor, does it necessarily prove that there is no community of interest? A. I think not.

Q. What is your reason for that answer? A. Fundamentally I think that it is true that traffic moves along the easiest channels for movement. Centers of trade develop at points of easy access, showing that the movement is along the lines where movement is easy. You can cite numerous historic examples. Every improvement in transportation has established new channels of traffic and developed new centers of trade and population.

Q. Do you care to say anything on the subject of whether the airlines owe a duty to the public over and above that of

simply competing directly with established surface trans-
[R. 3481]
portation? A. I think I might say that any new form of transportation should do two things in so far as its technical features will permit it. One is to perform an added or superior service along well established traffic lanes. The other is to develop new traffic lanes where because of technical or geographical limitations the old means of transportation have been unable to develop them.

Q. Do you believe that frequent stops by air within the Southeast are required by the peculiar features of that area? A. There are no very large cities in the Southeastern area. The moderately-sized cities are fairly close together. It would seem necessary to stop more frequently than in many other sections of the country in order to serve adequately this region.

Q. To take a specific example. Is Charlotte the largest city in the Carolinas? A. Yes, sir.

Q. Do they have adequate transportation by any means with other points in the Carolinas generally? A. It has adequate rail transportation in two directions only. It is, of course, surrounded by a good system of highways, but highway movement is relatively slow. It does not have adequate rail connections or air connections in an east-west direction. On the whole, I think it could be said given the present state of technique in transportation, that it is not adequately served.

Q. Is that true, for instance, of its transportation to and
[R. 3482]
from the State Capital, Raleigh? A. Yes, sir.

* * * * * * * * * *

Cross-Examination by Mr. Moore:

Q. Doctor, in reference to the cross east-west traffic from the Piedmont area and its inadequacy as far as surface transportation is concerned, did I understand you to say just now in answer to a question by Mr. Hill that you con-

sidered that a new operator without any affiliated operations of any kind would be in better position to furnish that service than an established carrier who might be able to integrate it with its present operations? A. I take the position that established transportation companies with definite interest in movements in certain directions are not apt to maintain a, let's say, interest in developing channels of traffic that cut those other channels at approximately right angles.

Q. Notwithstanding the fact that they may be well integrated into the general system of operation of an established carrier? A. Yes, sir, notwithstanding that.

Q. Take, for instance, Delta's operation. Are you familiar with Route 54? A. Yes, sir, fairly familiar.

[R. 3483]

Q. Route operating between Cincinnati and Atlanta via Knoxville, Tennessee, and Delta has an application pending in this proceeding for service in the Charlotte area and on down to its present connection with Route 24 at Columbia. Now, then, do you think that a more direct line—let us concede for—it is a more direct line from Charlotte into the Cincinnati gateway of less populated area would be—operated by a wholly independent carrier, would be better, more in the public interest than the integration of service, for instance, at Knoxville with Delta service and operated by Delta between the same points? A. I think the independent company would have a more active interest in developing the new channel.

Q. Do you think it would be as economically feasible as the integration of an existing service with the proposed new service? A. I don't see any reason why it might not.

Q. Take, for instance, just—I don't know whether this particular route applies in this case or not, but I think there is an application for a route from Charlotte by way of Hickory to Lexington, Cincinnati, I believe. Now, Hickory, of course, is already certificated for a stop at Charlotte, and has the connecting service I just spoke of at Knoxville at the present time. Charlotte on the other hand has no service at all. Do you think that that particular operation would be

more economically in the public interest than the operation, say, of an extension of Route 54 from Knoxville over to Asheville to Charlotte and on down to the proper terminal? A. [R. 3484] I suppose you are referring to the possibility of operating through plane, say, from Cincinnati by way of Knoxville, or perhaps further than Cincinnati?

Q. Either way, yes, possibly. A. I see no reason why an independent line might not do the same thing.

Q. Are you considering the difference in the traffic potential at such towns as Hickory and Tri-City as compared with Knoxville, Asheville? Just take the two that happen to be related there. A. I am afraid I don't see exactly what that has to do with your question. Perhaps, I don't understand.

Q. I am speaking in a broad sense as to the economic feasibility of a new independent route operated by an independent carrier between, say, Charlotte and Cincinnati in preference to the operation of the extension of an existing service from Knoxville to Charlotte? A. From the viewpoint of the carrier's post or his ability to provide the service?

Q. From the standpoint of service to the public and the traffic potential that may be developed, and from almost any other standpoint? A. I see no reason why a new company operating a line from Charlotte to Cincinnati by way of Tri-City might not do just as well as operating into Knoxville, and that is over Delta's present line.

Q. Do you think the traffic potential would be equal? A. I don't know whether it would or not.

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[R. 3490]

DONALD S. STRALEM was called as a witness on behalf of State Airlines, Incorporated, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Mr. Hill: May I make one request, please? Mr. Stralem has a little trouble with his hearing, so would you mind keeping your voices up and talking slowly?

By Mr. Hill:

Q. Mr. Stralem, give your name to the reporter. A. Donald S. Stralem.

Q. Mr. Stralem, what is your business address? A. 44 [R. 3491]
Wall Street.

Q. With what company are you connected? A. Hallgarten & Company.

Q. You are a partner in that company? A. I am.

Q. How long have you been a partner? A. For the past 12 years.

Q. In what business is Hallgarten engaged? A. They are investment bankers. They were founded in 1850. This is the 96th year of their existence.

Q. Has Hallgarten & Company at any time participated in the underwriting of stock issues of airlines? A. In 1929 we were one of the major underwriters in the original financing of Aviation Corporation, and we have participated in the underwriting of Western Air in 1937, American Export Lines in 1938, Pan American Airways in 1940, American Airlines in 1940, Taca Airways, 1945.

Q. Mr. Stralem, could you go just a bit further and give us a little more about Hallgarten & Company? A. Today we are one of the major underwriters of corporate securities. We are represented on the boards of the following companies, among others, Adams Express Company, American International Corporation, American Sumatra Tobacco Corporation, Anaconda Copper Mining Company, Crown Central Petroleum Corporation, Fansteel Metallurgical Corporation, Gotham Hosiery Company, Manati Sugar Company, Mid-Continent Petroleum, Paramount Pictures, Columbia Pictures, Waldorf-Astoria Corporation, Sylvania Industrial, U. S. Leather, Wilson & Company, Taca Airways.

[R. 3492]

Q. Now, additionally, Mr. Stralem, will you give us a thumb-nail sketch of your own experience in the underwriting field and banking field? A. As a banker?

Q. All your financial experience, just briefly. A. I graduated from Harvard, did graduate work at Cambridge University in England. I was associated with the banking firm of Pierson & Company in Amsterdam in 1926 and 1927; with Hardy & Company in Berlin in 1927 and 1928. I became associated with Hallgarten & Company in 1928 and became a partner in 1932.

Q. And since that time you have been continuously a partner in Hallgarten & Company? A. That is correct.

Q. Mr. Stralem, you are familiar with the fact that State Airlines, Inc. is here requesting authority to operate 12 routes and scheduled service within the Southeast, are you? A. Yes, in a general way.

Q. How do you believe that such a company should be financed if granted a certificate by the Board? A. Primarily through common stock finance, with risk capital. There are many other forms of financing; equipment trust and preferred stocks, and so on, but at the outset it would be preferable for an airline company starting in its corporate existence to certify—to be financed by risk capital.

Q. Do you believe that such financing would be successful?

[R. 3493]

A. Well, the last four or five years has seen a terrific interest developed in airline securities and I think in the post war period, granting that times are any way near normal, that there should be an enormous interest, speculative interest as well as investment interest, in airline securities.

Q. Mr. Stralem, I hand you what had been identified in this case as Exhibit STA-75, page 1. Do you recognize that as being a copy of letter written by your company to Mr. Gilbert? A. That is correct.

Q. Under date of June 7, 1945? A. That is correct.

Q. Does that still represent the views and the position of your company? A. Yes. We have prepared underwriting contract on the issuance of a permanent certificate.

Q. Now, I hand you what has been identified as page 2 of Exhibit STA-75. Is that a correct copy of a balance sheet of Hallgarten & Company? A. That is correct.

Q. Now, Mr. Stralem, I understood you to say that you were prepared to underwrite a stock issue if a permanent certificate should be issued to State Airlines. What if the Board should decide to issue a temporary certificate, what would be your position? A. We would also be prepared to underwrite a temporary certificate provided that the period of the temporary certificate would be long enough to permit the depreciation of equipment as allowed by the Board.

[R. 3494]

Q. Now, if the Board should see fit, Mr. Stralem, to grant State Airlines a portion of the routes for which it is here asking authority, what would be your position then? A. I have full confidence that the Board would grant only such certificates which would make an integrating airline company which could stand on its own feet and we would thereby be prepared to underwrite such portions of routes as the Board sees fit to grant.

Mr. Hill: I submit the witness for cross-examination.

Examiner Newmann: Before we go into cross-examination I will ask if there is any objection to the receipt in evidence of STA-82? (No response)

If not, STA-82 will be received in evidence.

(State Airlines, Inc. Exhibit previously identified as STA-82 was received in evidence.)

Examiner Newmann: Mr. Lyon?

Cross-examination by Mr. Lyon:

Q. Mr. Stralem, you used the phrase "risk capital". Will you tell us what you meant by that? A. By "risk capital" I meant common stock issues. Actually people who are interested in investing or placing their money in shares of common stock of a company just starting.

Q. With the full knowledge and realization that it is a speculative investment. Is that correct? A. That is right.

[R. 3495]

Q. Would that be the basis on which you would underwrite this stock issue in the case a certificate were awarded to this applicant? A. I think so, yes.

Q. Would you offer it to the general public or to any particular class of investors? A. That would depend entirely upon the conditions at that time, Mr. Lyon.

Q. And you would explain fully to the people that you propose to sell the stock just what the conditions of the issue were? A. That is correct. The securities and exchange commission registration statement would contain words to that effect.

Q. Has any discussion been had between your company and State Airlines with reference to the amount of stock that they would want to have you underwrite, the amount, between Mr. Gilbert and yourself, or anybody connected with your company? A. Not at the present time.

Q. There has been some testimony in the record here today that this company would need about $4,000,000 in capital, including the working capital and necessary equipment to operate that airline. Would your company be willing to go that far in providing capital for this company? A. Yes.

Q. Do you have any limit in mind? A. We have—naturally have a limit, because it will depend upon the

[R. 3496]

necessities for the capitalization, but, and if in our judgment it is too much capital—is required, we would try and see that it was held within the limits of necessity.

Q. What check would you have on the amount of stock? Would you have an independent check on that or would you take the word of the applicant for what was necessary? A. We would probably have an independent check as well as our own business judgment for background.

Q. Have you ever financed an airline on a temporary basis, basis of temporary certificate? A. I believe we participated in the American Export Lines. I am not quite certain, but I believe that was temporary certificate.

Q. Did you have any difficulty in selling that stock? A. None whatsoever.

Q. You said that you would want to have a length of time for the certificate long enough to depreciate the equipment in. Did you mean by that to fully depreciate the equipment? A. I should think so, yes.

Q. Supposing you have an application where the equipment is not to be depreciated in less than five years and a temporary certificate for only three years were awarded. What would your company's attitude be in that situation? A. I would feel that the Board would not issue a certificate where they couldn't depreciate in the time the certificate

[R. 3497]

was issued.

Examiner Newmann: Just a minute. I don't believe that is in answer to his question. I am going to ask that the reporter read his question.

(Question read by the reporter.)

The Witness: That I am afraid would lead us to not to finance on that basis.

By Mr. Lyon:

Q. In other words, you would want a certificate issued by the Board for long enough period to fully depreciate all the equipment that was proposed to be bought. Is that right? A. That is correct.

Q. Do you remember what the situation was with regard to the American Export Company. A. Afraid not.

Mr. Lyon: No other questions.

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Cross-Examination (Cont'd)

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[R. 3500]

By Mr. Hill:

* * * * * * * * * *

Q. Now, Mr. Stralem, the question was asked you if a three-year certificate were issued and depreciation were to

be computed on a five-year basis, whether you would be willing to undertake the underwriting. I understood you to answer that under those circumstances you would not. Would you be willing to undertake the financing if the depreciation were calculated on a three-year basis? A. Yes.

Q. You understand State Airline has calculated in this case on both bases? A. Yes.

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[R. 3501]

E. H. PICKERING was called as a witness on behalf of State Airlines, Incorporated, having been first duly sworn, was examined and testified as follows:

[R. 3502]

Direct Examination by Mr. Hill:

Q. Will you please give the official reporter your name and business address? A. E. H. Pickering, Dallas, Texas.

Q. What is your profession, Mr. Pickering? A. Aviation Consultant.

Q. Will you please tell us your experience and your qualifications as an Aviation Consultant? A. I started in aviation in airline work in about 1929 with Clifford Ball, Inc., now of Pennsylvania Central Airlines. 1931 became Traffic and Operation Manager of Clarksburg Airway, Inc., operating a single round trip a day between Pittsburgh and Charleston, West Virginia via intermediate points. After leaving Pittsburgh in 1935 I did free lance photographic and public relations work for quite a few of the airlines and other aviation industries.

In 1938 joined the staff of American Airlines in Public Relations at Chicago and later in Newark. Returned to Pennsylvania Central for some Public Relations in the introduction of their first DC-3's. Left Pennsylvania Central, became Vice President of Texas Air Freights and handled Cost Analysis, Traffic Studies and preparation of prospectus.

Just prior to the beginning of the war I became associated with North American Aviation at Dallas. Went from there

to Southern Aircraft as Chief Tool Planner. Was called to Washington by the War Department as a special con-

[R. 3503]

sultant on air cargo as a member of the Air Staff Headquarters Army Air Force.

Upon the completion of my consultancy there returned to Dallas, joined the staff of Guiberson Diesel Engine Company as Director of Editorial and Technical Research.

Since Guiberson I have been Air Transport Editor of Southern Flight Magazine and lecturer in air transportation at Southern Methodist University.

At present I am Director of Air Market Associates, a consultant organization, and Director of Air Market Data Service.

Q. In addition to that rather technical experience have you endeavored to keep abreast of all operating developments in the aviation industry? A. Yes.

Q. Have you been retained by State Airlines, Inc., to make an operation study of its proposed routes and to give the Board the benefit of your studies and conclusions? A. I have.

* * * * * * * * * *

[R. 3506]

Q. I believe your next changes come on Exhibit STA-38, do they not? A. Page 2 of Exhibit 38. The amount $5,000 opposite 1 Communications Station—1KW should be increased to $20,000.

Q. Including installation? A. Yes. The 6 communication stations should read at $6,000 rather than $4,000, giving a total of $36,000. The 48 Communications Stations should read at $3500 rather than $1500, giving a total of $168,000.

And the Miscellaneous Hangar, Station, and Ramp Equipment should be increased from $60,000 to $100,000, giving a total of $414,000, below there.

[R. 3507]

And under the summary, opposite Ground Equipment, change that to $414,000, as well.

With the grand total now reading $3,422,500.

The next exhibit where changes are necessary, 44, page 2.

Under the initial heading, 10 Terminal Stations, the item Rent and so forth should read $3,180 rather than $6,000, giving a subtotal there of $14,700 and a total up to the right of $147,000. The same item under——

Mr. Mills: (Interposing): Pardon me, is that last figure $147,000?

The Witness: That is right.

Same item under 14 Connecting Stations should read $6,685 rather than $4800, subtotal of $12,805 and a total up to the right of $179,270.

Under the 30 Intermediate Stations the same item should read $3900 rather than $2400, with a subtotal of $8,580, and a total up to the right of $257,400, and down below a grand total of $583,670.

Q. Now, on those changes pages 1 and 2 of Exhibit STA-44, Mr. Pickering—I beg your pardon, it is STA-38 you made the previous changes on, wasn't it? A. Yes.

Q. Now, on STA-38 you made those changes because simply to your knowledge those figures should be increased? A. That is right.

Q. They were too low? A. That is right.

Q. Now, on the changes you have just given us on page 2 [R. 3508]

of 44, will you please explain why those are being made? A. To allow for overall average landing fees of $50 per schedule per station per month.

Q. Now, page 3 of 44. A. On the bottom of page 3 under the heading Other Terminals, Connecting & Intermediate Stations, the item reading Rent, Heat, Light, Telephone & Insurance should now read $242,390, giving a total up to the right of $698,670, a grand total of $924,010. And the expense per revenue mile would then increase from 1.21 to 1.27.

Q. Now, should not Station Managers in the sixth line from the bottom of this exhibit read Station Agents? A. That is correct.

Q. What is your next? A. Fifty-one is next. Because of prior changes just mentioned the item 55 Ground Radio Communications Units, Annual Expense should now read $44,800, and the Miscellaneous Hangar, Station, and Ramp Equipment should now read $20,000, and because of changing the depreciation period on the Furniture, Fixtures, and Office Equipment that amount should now read $4,000.

Mr. Mills: What page is that?

The Witness: Exhibit 51.

This gives a total of $74,800 and an expense per revenue mile of .0102.

Mr. Hill: Mr. Examiner, the changes——

The Witness: (Interposing): I have one more.

Mr. Hill: I beg your pardon.

[R. 3509]

The Witness: Now, on the next page.

By Mr. Hill:

Q. That will be 52. A. On Exhibit 52. The fourth line, Ground Operations, because of prior changes should now read $924,010, and expense per revenue mile .127. And the last item, Depreciation Ground Equipment, should now read $74,800 per mile, and .010. The grand total as previously corrected should read $5,003,919, and expense per revenue mile .687.

. . . . . .

[R. 3510]

Cross-Examination by Mr. Lyon:

Q. Mr. Picking, did I understand you graduated from the University of Pittsburgh in 1935? A. That is right.

[R. 3511]

Q. What did you major in there? A. Business Administration.

Q. As I understand it, since that time you have been engaged largely in Public Relations work with airlines. Is that correct? A. Quite a bit of the time, yes, sir.

Q. Just how much of your experience has been in the technical end of aviation, that is, the actual operations management of airlines? A. Through the Public Relations I have been assigned quite a bit of time to doing technical articles and technical studies on the operations. I would say my own opinion is that by doing that I have been able to keep informed on a variety of items that I otherwise, if I had been a Despatcher or something, would have been unable to spare the time for.

Q. Are you an airline pilot or airplane pilot? A. No, I am not. I have flown in the past. I had a student permit years ago.

Q. Are you an airplane mechanic? A. No, I am not a mechanic.

Q. How long have you been operating as an aviation consultant in Dallas, Texas? A. Over the space of over two years.

Q. Have you prepared any exhibits on behalf of any applicants in any new route cases before the Civil Aeronautics Board? A. Yes.

[R. 3512]

Q. Can you tell us what experience you have had? A. Prepared the entire operations case exhibits for Texas-New Mexico Airlines in the Texas-Oklahoma cases.

Q. That was one company? A. That is and studies for several companies.

Q. And you testified on behalf of that applicant in the Texas-Oklahoma case, did you? A. I did.

Q. Why did you make the changes that have been suggested by you in these exhibits? A. More from a basis of conservatism, I would say, than anything else.

Q. Upon what did you base those changes? A. I didn't feel——

Mr. Hill: (interposing): Mr. Examiner, may I suggest—I know that the changes were on various bases. Some of them were from Mr. Pickering's knowledge that things couldn't be obtained for any price, or his belief. I wonder if Mr. Lyon could be a little more specific.

By Mr. Lyon:

Q. I realize that. I presume that all you can tell us is based upon your general knowledge of cost figures in the industry. Is that correct? A. That is right.

Mr. Hill: And others are based on your general knowledge of how an operation would be carried on.

By Mr. Lyon:

Q. Have you had any actual experience with the conduct [R. 3513]
of operations such as being proposed by State Airlines in this case? A. I am not quite clear.

Q. Have you had any actual experience in the operations of DC-3 equipment, for example? A. American Airlines and Pennsylvania Central were both operating DC-3's while I was doing work with them.

Q. What specifically did you do in connection with those companies which would give you knowledge of the operation of DC-3 airplanes? A. Ridden on many a test flight, studied construction failure, and so forth, in order to prepare stories on safety, photographed any indication of damage or failure.

Q. Referrring to your written statement, STA-P, page 1, I note that you say the Lodestar, Lockheed Lodestar has ten fewer seats than DC-3's. How many seats do you allocate to each of those planes? A. Fourteen to the Lodestar and 24 to the DC-3.

Q. Do you mean 24 passenger seats [illegible] the DC-3? A. That is correct.

Q. In addition to the pilots? A. That is correct.

Q. Isn't it a fact that the DC-3's now have 21 passenger seats? A. Those at present in use by Northeastern have 24—I beg your pardon, in use by Northeastern prior to the war, and now—TWA is now operating some 24-passenger DC-3's.

[R. 3514]

Q. Do you mean by that that those planes can be fitted so that you can get more seats in them? A. Removable, at least in one case. Their front baggage compartment has permitted readjustment of the seating arrangement.

Q. Are your figures in this case based upon a 24-passenger capacity for the DC-3 to be operated by State Airlines? A. That is correct.

Q. You have in mind in the operation of the DC-3's that they would be used in operations over the Appalachian Mountains, for example, by State Airlines if they were awarded a certificate? A. Over the route herein set forth.

Q. Do you think they could safely accommodate 24 passengers over such routes? A. Yes, I should say so.

Q. Referring to your Exhibit 59, STA-59, page 1. You are basing the Beech 18S as a 5-passenger airplane. Is that correct? You are estimating that as a five-passenger plane? A. That is correct.

Q. I fail to see on the following three pages under what theory you make that statement. Can you tell us just specifically why you regard that as only a 5-passenger airplane? A. That is taken from page 3. Pay load units at 200 pounds as the average assigned to a passenger with baggage as 5.73.

[R. 3515]

Q. There has been some testimony in this record, Mr. Pickering, that these Beechcraft are designed to carry eight passengers. Is that a fact? A. I believe there has. I haven't been here during the testimony, however.

Q. Wouldn't you say from your knowledge of that particular plane that eight passengers is the normal load of

it? A. Well, I would prefer not to get into a discussion of the Beech, but I do realize in Army practice it is a five-passenger airplane and two pilots.

Q. What personal knowledge do you have of the Beechcraft operation? A. I have looked over their analysis sheets that Beech Aircraft have distributed; studied it while I was with the Army Air Forces as being a potential cargo plane. One of my duties with them was to analyze all transport aircraft and make recommendations on the basis of those analysis.

Q. Do you agree with the original estimates in this case to the effect that the DC-3 is the most economical plane for operating routes such as purposed by State Airlines in this case? A. On the basis of seat mile costs and under the estimated traffic potentials, yes.

Q. And by estimated traffic potentials you mean those [R. 3516] that were submitted in evidence in this case by State Airlines? A. That is right.

Q. What load factor do you figure on in those calculations? A. I believe it was 11.4.

Q. You mean, 11.4 passengers per mile? A. That is correct, on the average. Taking from that, assuming that a 70%——

Q. (interposing): On a percentage basis what would that be? A. Slightly under 50%.

Q. I think I interrupted you in a statement. A. I was going to say on the basis of adding additional schedules with an average of 70% load factor was maintained—was reached, that 11.4 passenger average would provide for accommodating anywhere from 16 to 24 passengers on various routes proposed by State Airlines.

Mr. Lyon: No other questions.

Examiner Newmann: Any further questions? Mr. Cummings?

Cross-examination (Cont'd) by Mr. Cummings:

Q. Is there any difference between Beechcraft Model 18-S and B-18-S? A. I prefer not to get into a discussion of that. This Beech exhibit prepared by American Airlines and entered in here as purely indicative of the combination for the computation on page 1 of Exhibit STA-59.

[R. 3517]

Q. As I understand your exhibit—I wasn't here when you testified to it originally—one of the purposes is to rate the Beechcraft 18-S as to the pay load that it can carry. Is that correct? A. Would you repeat that statement, please?

Q. One of the purposes of this exhibit is to rate the Beechcraft 18-S as to its pay load. A. No. I would say that the purpose was to indicate the cost per seat miles, that is, the potential passenger revenue unit as proposed in the operation of the selected carriers.

Q. Well, is not another purpose of the exhibit as to how much pay load it can carry in view of the figures you have on the following pages, that is, pages following page 1? A. I would not necessarily say that.

Q. How do you arrive at the fact, you say it won't carry but five passengers when it has got eight seats? A. From the statement which is indicated here entirely as a source of the information, assuming that to be right.

Q. Am I to understand you, then, that you do not undertake to rate the seating capacity of the Beechcraft for operation purposes, passenger seats? A. That is correct.

Q. What, then, is the purpose of the figure "5" on the first page of the exhibit? A. The figure was derived from the information on the following pages.

[R. 3518]

Q. What does it purport to show? A. Cost per seat mile.

Q. You mean the figure "5" does? A. It would show the passenger capacity based on that information.

Q. Well, now, right down the line, we got rid of three seats. As I understand it, that ship had eight seats. You

understood that, didn't you, in making these calculations? A. Not necessarily.

Q. Well, do you know how many seats that this ship you are rating here had, whether it had eight or five? A. Beechcraft 18-S has five seats.

Q. How many seats does B 18-S Beechcraft have? A. To the best of my knowledge there is no airplane today that is known as B 18-S that has progressed beyond design stage.

Q. Are you familiar with the proposed specifications of Beechcraft with respect to Beechcraft B 18-S? A. I have seen them.

Q. Would the information you have contained in this exhibit apply with equal force to that model, B 18-S Beechcraft? A. I don't believe I can say that.

Q. Could you say it would or wouldn't? A. No, I wouldn't.

Mr. Cummings: That is all.

[R. 3519]

Examiner Newmann: Mr. Maurer?

Cross-Examination by Mr. Maurer:

Q. In making your estimates here, or approving these that are made in these exhibits, have you made any comparison of these proposed DC-3 costs with those of existing DC operators? A. Yes, I believe so.

Q. Do you think it is possible to achieve the estimated per mile costs shown in these exhibits regardless of the experience of present DC-3 operators? A. Yes.

Q. Now, with respect to the Capital Equipment—Flying Equipment as shown in Exhibit 38. Are those estimates of cost made on new or used equipment? A. I believe the second paragraph of that exhibit covers that.

Q. It isn't quite clear to me. You say these DC-3's are airplanes that might be purchased from the Defense Plant

Corporation, but do you infer by that that they would be overproduction by present assembly lines, which would mean new airplanes never flown by the Army or they would be surplus ones? A. That could be either.

Q. Make quite a difference in the cost. A. In the cost of airline operation?

Q. As to whether these would be new airplanes or surplus [R. 3520]

equipment, that is, the $70,000 figure that you have there. A. There might be some of each.

Q. In other words, this is an average figure, this $70,000, for the whole. It might be partly used airplanes and partly new airplanes? A. I believe that is the present price set on them by the DPC.

Q. Do you have any idea what the charge for a new DC 3, as it comes off the assembly line today, would be, approximately, including propeller and standard instruments? A. I have read just recently that Douglas at their—one of their Mid West plants are resuming service, or beginning production of the DC 117, which is somewhat similar—will be some what similar to the DC-3, and it will be made for passenger usage.

Q. Was there any estimate of the cost? A. $115,000 new.

Q. The cost before the war of such an airplane was about $110,000, was it not? A. I would say it varied between $105,000 and $120,000.

Q. Wouldn't you expect that a DC-3, which is the 24-passenger Douglas, would cost about $130,000 coming off the assembly line today with present day costs? A. I don't think even Douglas could answer that.

Q. Do you have any idea what the airlines have been paying for surplus DC-3 equipment, or what TWA paid for [R. 3521]

surplus DC-3 equipment? A. I don't know what TWA paid, but Defense Plant Corporation figures were based on $100,000.

Q. I am sorry, I didn't quite understand. A. I say, I have no idea what TWA paid for their planes.

Q. Now, once again, is that the new or used airplane from the DPC that is based on $100,000? A. I believe everything up to the present time has been used equipment.

Q. If that is DPC figure, do you have any items in these exhibits for conversion of costs? A. The DPC allows certain amount for conversion cost. The actual price of each airplane varies and the amount that it differs from $100,000 is to be made up in conversion cost.

Q. That has been true on Army surplus equipment which the present operators have been buying? A. I think it has.

Q. Do you know whether it has been the experience of the present operators that they have been buying airplanes from the Army as allowed in the actual conversion? A. They have been running over.

Q. How much over, do you have any idea? A. No.

Q. Do you think that the schedules which have been set for this operation will produce the maximum utilization of equipment which can be obtained over these routes? A. The

[R. 3522]

maximum utilization in regard to traffic needs, shall we say.

Q. Do you think that is an economical operation to average less than seven hours per plane per day? A. I think you would find the average eight and a half hours.

Q. Do you think that would be an economical operation? A. I think there is room there for greater economy.

Q. By that I assume from your previous answer it would be possible in view of the traffic potential of these routes. Is that right? A. It is conceivable it could be possible.

Q. Will you turn to Exhibit 41, please? Could you tell me what is included in the item Flight Crew Expense? Let me ask the question: Does it include such things as hotel rentals? A. Yes.

Q. Uniform insignia? A. Yes.

Q. Airport transportation for flight crews? A. Yes.

Q. Medical examination for flight crews? A. Yes.

Q. And you believe that those items, plus the other seven items applying to expense for the number of flight crews

involved in this application could be handled for $29,000 a year? A. It seems likely.

[R. 3523]

Q. Under your flying operations expense do you have any provision which would include uninsurance damage to flight equipment? A. It will be taken care of under maintenance cost.

Q. That is not properly charged to maintenance cost, is it? A. May not be properly charged under Standard Set of Accounts.

Q. Would you say that some small figure should be added here for that or that it has already been taken care of under maintenance? A. If it were to be added, it would have to be deducted from ae other.

Q. Can you tell me approximately how much was allowed for that under maintenance? A. I can't.

Q. Do you have any provision here for Chief Pilot? A. Directly, I do not believe so.

Q. Would you approximate the salary of Chief Pilot? A. Depending upon whether he was a flying man or not. In this case, I believe he would be.

Q. Would he also serve as a second pilot for all of your flight crews? A. He or an Assistant Chief Pilot.

Q. Could you approximate for me the salaries which would properly be charged to flying operating expense to

[R. 3524]

cover that man or those men? A. In the aggregate that would be rather a small amount.

Q. Would you say, perhaps, $8,000 for a Chief Pilot in view of the salaries you propose to pay your line pilots? A. Including his line service, yes.

Q. Do you anticipate you would be able to take one of these men whose time you have figured over here under your 54 Captains and also have him perform the duties of a Chief Pilot and Check Pilot and still to run his time on the line? A. With proper assistants, yes.

Q. What do you mean by "proper assistants"? A. Assistant Chief Pilot who would also be flying the line.

Q. Let me ask you another way. Based on your experience with airline operation, do you know any airline in the country, regardless of size, which has a Chief Pilot which runs on the line regularly and derives his pay as a line pilot? A. Day's operations, I couldn't say.

Q. Have you ever heard of any? A. Yes. Couple years ago.

Q. Who? A. Pennsylvania Central.

Q. What was the name of that pilot? A. Budd Baker.

[R. 3525]

Q. What was his title? A. Chief Pilot.

Q. Was he paid any salary above and beyond his pay as a line pilot? A. I would assume that he was.

Q. How much would you assume he was paid? A. I would not.

Q. How much would you expect to pay a Chief Pilot above their line pay for those additional days? A. Possibly $100 a month.

Q. Then, we could add a minimum of approximately $2400 to this annual expense on 41? A. Under a direct item such as that, yes.

Q. Can you give me an approximate figure of the cost of a Chief Pilot if you had to hire one independently of your line pilots if it was found necessary to devote the full time of your pilot to supervision? A. I would say about the same as we have just figured.

Q. We had figured $2400. You don't expect to hire a Chief Pilot for that? A. No. The equivalent of his line pilot's pay plus $100.

Q. About $6,000 a year? A. Or possibly a little more.

Q. Based on your experience would you deem it necessary for the Chief Pilot and assistants to have any secretarial help? A. Quite possible.

[R. 3526]

Q. Is there any item in this flying operation expense for such secretarial help or for office supplies? A. Not under that particular item. I believe you will find it totaled in another place.

Q. Where? A. Under general office employees in Exhibit 50.

Q. That is not properly charged to general office, is it? A. May not be, but the amount here is ample. Rather than make numerous small charges, I think that the overall is sufficient to amply cover it.

Q. What about flight training? Do you have any item in flying operations expense to cover that? A. Under output to the airplane, Aircraft Operating Expense, yes.

Q. What about flying operations expense? A. Under——

Q. (interposing): I am looking still at Exhibit 41. In other words, when you are starting either a new operation or old operation, it is going to take a lot of time to check at your pilot on two engine equipment, to conduct your route surveys, and so forth, and then after your operation is functioning, you are going to have trainer time and so on. There should be some item under Flying Operations Expense to cover that, should there not? A. According to the System of Accounting, yes. I think you will find that in the esti-

[R. 3527]

mates made here that it would be amply covered.

Q. Can you refer to any specific item which would cover that? A. Yes, I can refer to one, Exhibit STA-40. The hourly pay day and night, according to my figures, is figured amply high. Rather than to make the changes as we have had to do in a couple cases, I had assumed, I am sure it will amply cover the cost that you are just questioning.

Q. It is your idea you are going to pay those men that hourly pay for training them? A. I am not putting it that way. I say that the fact that those are overestimated.

Q. How much are they overestimated; how many hours did you figure into that pay, how many hours per month? A. Entire flight operation.

Q. I am sorry, you didn't understand. Captains fly 88 hours a month. How many hours did you figure there? A. The correct amount of hours for the rate of pay, it is a little high.

Q. Would you imagine that would amount to $5 a month per Captain? A. Yes.

Q. How much more? A. About 80¢ an hour in the case of day pay, $1.20 an hour, night pay.

Q. Why did you figure that high above pay? Are you [R. 3528]

contemplating operating some equipment faster than DC-3's? A. As previously stated, I didn't figure this. I checked over the figures and figured that is an error on the high side.

Q. Do you think that all the items we have been talking about here under Flying Operations Expense might make 1¢, 2¢ or 3¢ a mile difference? A. The total, I doubt they might; that is for the reason that, as just stated, it is to take care of some rather high estimates throughout.

Q. If you were going to pull them out of other exhibits, a definite item, and bring them out in Operating Expense, where they belong, do you have any idea how much they would amount to on a per mile basis? A. Under a cent a mile. That is a rough estimate, as I am just sitting here thinking.

Q. I don't believe I find in any of these exhibits any expense for motorized vehicles. Is that right? A. Directly, you are correct.

Q. Would you anticipate some cost for that? A. Of course.

Q. Beg your pardon? A. Yes.

Q. Do you have any idea how much it would amount to for all the various divisions of the expense estimate? A. Wouldn't even begin to estimate it without taking some time [R. 3529]

to figure it. I think it has been amply taken care of in the exhibit estimates.

Q. Let us take a look at Exhibit 47, Passenger Service Expense. So far as you know, does this exhibit contain all the expenses which should be attributed to Passenger Service Expense? A. You have noticed the note below?

Q. Yes. A. With that exception, I believe it has.

Q. Do you think it would be necessary in the normal course of events to charge some travel cost to Passenger Service Department, to men that work in it? A. I don't believe I understand your question.

Q. Do you think there would be some travel involved by your superintendent here in his duties? A. Undoubtedly, there would.

Q. What about office supplies, office help and telegraph, light, heat, power and water, passenger supplies, interrupted trip expense? A. Miscellaneous expenses have passenger service.

Q. Compensation insurance, what about compensation insurance? A. Let me see, let me check one thing a moment, please. Yes, distinctly that was a consideration and it was taken care of, but I am not sure right now where.

Q. If my division is correct, that $60,000 figure there under Miscellaneous Expense amounts to .008¢ per passenger mile based upon your other exhibit. Do you think it would be possible to cover under passenger service alone the various

[R. 3530]

items I have mentioned, such as, travel, office supplies, telephone, light, heat, and passenger supplies expenses, interrupted trip expense, compensation insurance, and so forth .008¢ a mile on passenger service expense? A. Not all passenger service expense, no.

Q. Now, I have some more questions of the same type. If I am being unfair in the summaries, you explain them. A. May I interrupt a moment. These exhibits are set up in such a way that possibly not all the items directly chargeable to each heading are contained within them.

Q. I understand that, of course. But my questions are based on the fact I can't find these in these exhibits. A. I see.

Q. Look at 48 for a minute, Traffic & Sales. Here again you have only a miscellaneous item of $60,000, which again is .008¢ a mile. Now, normally there should be charged to this division of Traffic & Sales some expense for incidental travel agencies, commissions, tariffs and schedules, office

supplies and expense, rents of buildings and offices throughout the breadth of the system, liability insurance, employees compensation, and other miscellaneous insurance. Do you think that the single figure of .008¢ per passenger mile would cover this, or do we again have to look at some other exhibit to find those items? A. I will have to look at that. (Witness refers to document) Our program of our expense per revenue mile is .059, compared to that of Braniff of .0482. Same period for Northeastern .0510.

[R. 3531]

Q. Do you know whether Braniff had a General Traffic Sales Manager during 1942 or was the man who acted in that capacity an officer of the company whose salary was charged to G and A? A. As to that I couldn't say.

Q. Let us take a look at 49. Same general type of question. Your miscellaneous item here amounts to .002¢ per passenger mile. There is no provision other than that .002¢ per passenger mile for office supplies, telephone and telegraph, rental of buildings and offices, time tables, circulars, building insurance, employees compensation insurance, and so forth. A. I can't give you a breakdown on each one of those items, but your office expense, I believe, you will find under General Administrative expense.

Q. You have ten advertising and publicity agents. Will they have any office expense? A. Undoubtedly, there will be some that could be charged against them.

Q. That wouldn't be charged to G and A for the men out in the field, naturally. A. In setting up the accounts, you probably will be correct.

Q. That same general comment could apply to your same ten Traffic Managers. You don't have that item under G and A which is going to cover rent out in the field? A. You will find rental items for each of those.

Q. In other words, the rentals which you propose for each station here are going to cover the office space for District Travel Manager and whatever secretarial help he

[R. 3532]

may have, and Station Manager and whatever help he may have, depending on a particular city, and whatever secretarial help that particular man may have, plus office space and any passenger service equipment which may be in that particular city. Is that the general idea? A. That is right.

Q. Would you have any idea of approximately how much office space would be necessary at a given airport to house a District Travel Manager, a secretary, a Station Manager, a Station Agent and a secretary for the Station Manager, in footage? A. How many employees was that all told?

Q. Five. A. For the employees about 40 square feet, as a minimum.

Q. How much as a maximum? A. Up to 60 as a maximum. That is for desk space, general office space.

Q. Take a look at General and Administrative Expense on Exhibit 50. A lot of these items have been referred to. Here again we have the same miscellaneous expense item of $60,000, or an .008¢ per revenue mile. Now, you have already told me you thought several of these things which I have mentioned would come into this miscellaneous account under G and A, have you not? A. Well, let's see. Will you pardon me just a moment, I want to find something here.

Examiner Newmann: Let's take a one-minute recess while he is finding it.

[R. 3533]

Mr. Maurer: I think there was a question pending.

The Witness: I think possibly I can sum it up briefly for you, if you would like.

By Mr. Maurer:

Q. Yes. A. The first is—these accounts have not been set up in accordance with the Standard System of Accounting. They have been grouped in general terms that gets an overall average. State is proposing an economical operation, doing away with, not many, but some of the items that the established airlines are favoring today. City ticket offices is

one of them. Amounts have been set in here for rent item, light, telephone and insurance at terminal stations, at connecting stations and intermediate stations at the airport. And the items that you have mentioned will be found in there.

Q. Where would I find these other items of expense that we have just been going through, under miscellaneous? A. In some cases yes, in some cases under cost of terminals.

Q. I have been through every page now. A. You won't find it by actual name, Mr. Maurer.

Q. Will I find it under miscellaneous? A. Some of them, yes.

Q. Don't I have to find all of them under Miscellaneous? What you have done is set out specific items and added a miscellaneous group of expense. Every question which I asked wasn't covered by any one of the specific accounts, therefore, it must appear in the Miscellaneous items on some one of

[R. 3534]

these pages, Exhibits 44 to 50, that we have been through. A. Or in the estimate of the ground operation expense, it could be main base.

Q. I still don't think that answers my question. Let us go back a minute. We will start out with Exhibit 38. That was Capital Investment. That won't have any of these items you have been talking about? A. No.

Q. Then we go over to 39. That is Gasoline, Oil and Insurance Expense. Now, the only insurance there is Crash and Hull Insurance and Public Liability. That doesn't cover passenger liability, does it? A. No, it does not.

Q. It does not cover Workmen's Compensation, does it? A. No, it does not.

Q. It doesn't cover buildings and contents, insurance on public liability for persons in those buildings, does it? A. I am not sure what you mean by that. Will you repeat it, please?

Q. Your public liability is based on charge per mile, so obviously that is a figure based upon the number of miles

you operate and the possibility of an airplane crashing into some public property. A. Correct.

Q. Completely separate from that you have your office and your hangar, for example. You would have to insure

[R. 3535]

against the possibility of accidents occurring to some member of the public within those premises. In other words, buildings and contents and public liability for those buildings. A. For buildings that are owned or completely rented by State Airlines, you mean?

Q. Your liability will be the same either way, won't it? A. Yes.

Q. That is not included on this Exhibit 39, is it? A. Go ahead.

Q. Now, with respect to Exhibit 40. We talked about Chief Pilots and Assistant Chief Pilots, checking, training before you got into operation, transitional training, check flights as the operation progressed. A. May I interrupt you? Any expense prior to commencing operation would not be included in this.

Q. Why? A. This is estimate of the cost per month after operations began and during, we will say, the first year of operations.

Q. They are two different things. First year of operations, the items of which you just spoke should be included, should they not? A. Checking out pilots before the operations began?

Q. Yes, sir. A. Not necessarily.

Q. Those various things which I just covered, they should be charged to this account, but do not appear on this

[R. 3536]

page, or in any of the pages, do they? A. If I understand your question, no.

Q. We sketched over the flight equipment maintenance and depreciation, although depreciation ties into capital investment, and we noted the fact that there was no motorized expense shown under any of these various exhibits, did we not? A. Not by name.

Q. So that has got to appear in Miscellaneous Expense, has it not? A. Correct.

Q. When we got over to Passenger Service Expense we went through various items, and I think you referred me to the possibility that several of them would be covered by miscellaneous under General Administration. A. Or under the item rent, heat, light, telephone, insurance under the station heading. That is Exhibit 44.

Q. Everything that is in 44 has been summarized so far as the total cost is concerned in these pages we are talking about, hasn't it? A. I am not sure of the page we are on now.

Q. All right, I will start again. Under Passenger Service Expense on 47, your Traffic and Sales on 48, and I think under Advertising and Publicity on 49. We went through several questions about travel expense, office supplies and expense, telephone and telegraph, passenger supplies expense, interrupted trip expense, buildings, contents and liability insurance, compensation insurance, rents on buildings and offices at points other than the home office, cost of publish-

[R. 3537]

ing tariffs and schedules, agencies, commissions, cost of publishing time tables and circulars, and employee's compensation.

Now, none of these have been covered with the possible exception of rentals of space shown in 44 at any place in the Exhibits up to Exhibit 50, unless they were covered in miscellaneous expense. Is that correct? A. Miscellaneous expense is not under either of the headings, as stated before. I can't help but think I have answered the question, but go ahead.

Q. Let us take a look at Exhibit 50, which is where we left off. I will agree with you that certain items such as travel and incidental office supplies, telephone, telegraph, could very conceivably be covered by that item of $60,000. A. Thank you.

Q. Here in your home office, you have about 105 persons in this one office alone, so that that figure probably is not

far off. Can you tell me where under General Administrative or in some other place in these exhibits you have such items as the following: legal, sales, proceedings expense, corporate and fiscal expense, general taxes, uncollectable revenues, and the like? A. I will still say under Miscellaneous.

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[R. 3538]

Cross-Examination (Cont'd) by Mr. Mills:

Q. Mr. Pickering, you were consulted by State solely with reference to this particular proceeding. Is that correct? A. Correct.

Q. Turning to Exhibit 59, column 1, on the left you have the word "Southern"; referring to Southern Aviation or Southern Airways? A. Whatever one is appearing in this case; which is it?

Q. They are both appearing. A. Southern Airways.

Q. In Column 6 you have the heading Break Even Mail Pay. Is that for the first, second or third year of operations?

[R. 3539]

A. May I have a copy of your exhibit? I can't recall offhand.

Q. I am speaking of all the companies. A. I don't understand your question.

Q. If the break-even mail pay was given or appeared from the figures in the exhibit from the first year of operation, are the figures that you set forth for the first year or for the second or third year? A. I can't say without checking back.

Q. You didn't follow any uniform rule in that? A. I can't say without checking back.

Q. You mean, you might have taken the first year in one case and the second year in the other? A. I think I answered. I said I can't answer that without checking back.

Q. I am asking you whether you followed a uniform rule if there were costs for more than one year? A. I still say I think I answered.

Q. My question is: You may very well have taken different years for different applicants. Is that correct? A. I can't answer that without checking to see what I did.

Q. You can't answer, I assume, also as to column 8? A. It should be a very simple thing to check the exhibits and see.

Q. Now, pages 2, 3, and 4 of Exhibit STA-59 were an exhibit in the Florida case. Is that correct? A. Right now [R. 3540]

I don't recall which one it was.

Q. Either the Florida or Great Lakes case it was in? A. I think so.

Q. You didn't prepare that exhibit? A. No, I did not. It is included here purely for reference. I just put this in as a reference. It was prepared by American Airlines, as it indicates.

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5. Piedmont Aviation, Inc., Exhibits. Record Volume 14.

[R. 7358]

PIEDMONT AVIATION, INC.

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EXHIBIT PI-1

[R. 7562]

PIEDMONT AVIATION, INC.

NAMES AND QUALIFICATIONS OF WITNESSES

Thomas H. Davis, President, Treasurer and Director

Mr. Davis was born in Winston-Salem, North Carolina, March 15, 1918, and has resided there most of his life. He began flying in 1934, while attending high school in Winston-Salem, and in 1938 obtained his Commercial Pilot's License and Instructor's Rating while attending the University of Arizona. In June of 1939, Mr. Davis was employed as sales manager of Camel City Flying Service, during which time he traveled extensively throughout the Piedmont area, demonstrating various types of aircraft. Mr. Davis served as Vice President, Treasurer and Director of Piedmont Aviation, Inc. from July, 1940 until June 25, 1943, when he was elected President, Treasurer and Director. He presently holds Commercial Pilot Certificate #32478 and has had approximately 3,500 certificated flying hours.

C. K. Brown, M.A., Ph.D.

Dr. Brown was born in Salisbury, N. C., and has resided in North Carolina most of his life. He attended Davidson College, Davidson, N. C., from which he received his A.B. degree in 1921. He received his M.A. degree in 1923 and Ph.D. degree in 1927 at the University of N. C. The Development of Transportation in the Southeast was the subject of major study for his doctorate.

He was Research Assistant during 1925-26 and Research Associate, 1929-30, in the Institute for Research in Social Science, University of N. C. He has served as Professor of Economics at Davidson College since 1926. Dr. Brown has been Dean of the Faculty at Davidson since 1941. During the summers of 1928, 1929 and 1937 he was visiting instructor at the University of North Carolina.

[R. 7563]

Frederick Henry Ponish, C.E., E.M.
Superintendent of Maintenance

Mr. Ponish is a naturalized citizen of the United States. He was born in Innsbruck, Austria, on July 11, 1892. He attended the public schools and technical high school in Vienna, studying civil engineering. In October, 1912, he came to Canada, and entered the United States from there in May, 1914. In this country he attended Montana State School of Mines, studying mining engineering.

In 1919 he attended the Michigan Automobile School in Detroit and after graduation was employed by the Presbyterian Junior College at Maxton, N. C., where in addition to his regular instruction duties, he taught aerodynamics, aircraft engines and navigation to college students enrolled in the Civilian Pilot Training Program at the college.

He accepted a position as ground school instructor with Piedmont Aviation in 1941 and served the company in that capacity until February, 1944, when he assumed the duties of Superintendent of Maintenance. Mr. Ponish also taught aircraft mechanics and aircraft inspection classes for the University of North Carolina. While serving in the capacity of Superintendent of Maintenance for Piedmont Aviation, Mr. Ponish has installed and conducted regular classes for the instruction of Piedmont maintenance personnel in aircraft and aircraft engine maintenance and overhaul subjects.

[R. 7564]

Milton F. Fare
Secretary and Chief Accounting Officer

Mr. Fare was born in Walkertown, North Carolina on January 23, 1911. He was employed by the Greyhound Corporation after graduating from business college as an accountant in 1932. In 1935 he resigned this position in order to enroll in the International Accountants Society, Inc., Chicago, Illinois, and to accept a position as accountant with Armour and Company. He was later employed by the accounting firm of Ernst and Ernst.

Mr. Fare joined Piedmont Aviation, Inc. in 1940. He was appointed Chief Accounting Officer and Assistant Secretary in 1941. Mr. Fare was elected Secretary of Piedmont Aviation in 1944. In this position Mr. Fare has supervised the accounting department of the company and has developed a number of specialized accounting methods to be used in commercial aviation operations.

Exhibit PI-2 (R. 7565) consists of one page and establishes the United States Citizenship of the Piedmont Directors, Officeholders and Stockholders.

Exhibit PI-3 (R. 7566) consists of one page entitled *Introductory Note to Piedmont's Exhibits.* This Exhibit lists the Piedmont Exhibits under the section as stated in the Index of Exhibits under the following introduction: "Piedmont Aviation, Inc., proposes in this case scheduled Air Mail, Pick-Up Service, 15 Routes and Mail, Passenger and Express Service of 5 Routes."

[R. 7568]

EXHIBIT PI-4

History

Piedmont Aviation was incorporated under the laws of the state of North Carolina on July 2nd, 1940. At that time the company obtained a lease from the Forsyth County Airport Commission in order to conduct an airport sales and service operation at the Winston-Salem Municipal Airport, now known as the Smith Reynolds Airport. Since that time, the Piedmont organization has had an uninterrupted period of growth with ever-expanding aeronautical activities.

At the time of organization the company obtained Distributor franchises from two popular manufacturers of personal type aircraft for the state of North Carolina. Aircraft Sales and Service was the principal activity of the company from the date of organization until the outbreak of World War II. The company established 14 dealer organizations and sold over 100 airplanes (more than the total sales of all other makes of aircraft) within the state of North Carolina

during a one year period. This fact in itself is evidence of the outstanding managerial and promotional ability of the company.

In addition to aircraft sales, Piedmont developed an outstanding flight training program for individual students. The highest standards for flight instruction personnel and flight equipment have always been demanded by Piedmont, and as a result the school was approved by the Civil Aeronautics Administration the latter part of 1940 as a Government Approved Primary and Advanced Flying School. Jointly with the development of the flying school, highly trained personnel and specialized equipment was obtained for the installation of a ground school for the instruction of all aeronautical and allied subjects. The Ground School received a certificate of approval from the CAA in 1940. Both the Flight and Ground School certificates are currently in effect.

As a result of the well-planned training activity and outstanding operational ability, Piedmont has been awarded many Government contracts for flight training in Primary, Pre-Glider, Secondary (acrobatic and precision flying), Cross-Country, Instructor, and Night Flying Courses.

In October, 1940, Piedmont started its first CAA pilot training contract under the Civilian Pilot Training Program. This was one of the first non-college units. The high quality of training and equipment maintenance in conducting this program warranted the selection of Piedmont as one of the 14 Type A CAA Training Centers to be established in the entire United States. Execution of the Type A contracts began on July 1st, 1941, and continued for 18 months. During this time a class of sorely needed flight instructors was gradu-

[R. 7569]

ated from the school every month for assignment to Army Pilot training schools. In addition to flight training, Piedmont also conducted ground school classes in navigation, meterology, Civil Air Regulations, aircraft, aircraft engines, instruments, parachutes, military subjects, etc. It may be

accurately said that the record established by the flight instructors trained by Piedmont in this program is outstanding.

The performance of the Type A contract was so efficient that in January, 1942, Piedmont was awarded a contract by the Defense Supplies Corporation to train Central and South American students to become flight instructors. This contract also included flight and ground instruction. Most of the students had never been up in an airplane and very few could speak the English language. Even under these difficulties, Piedmont completed the contract on schedule and in a most satisfactory manner. Most of the graduates of this program are now serving as leaders in the Air Forces of their respective governments.

After the completion of the Type A and Inter-American contracts, various other flight and ground school contracts were awarded to Piedmont for flight and ground instruction. Final ground school examinations of Piedmont students indicate a higher student average than that of any other ground school contractor (most of whom were recognized colleges and universities) in the Second CAA Region.

Of the hundreds of students assigned to Piedmont for flight training under Government contracts, none have been seriously injured. This represents a total of 31,975 hours of all types of flying—acrobatics, cross-country, night flying, etc.—or the equivalent of 3,200,000 miles (128 times around the world) of safe flying. These figures do not include the thousands of hours of private flight instruction and charter service operation conducted by Piedmont without a serious accident.

Among other outstanding developments, Piedmont has continued to expand its aircraft and engine repair and overhaul facilities to the point where it has one of the leading CAA approved aircraft and engine overhaul repair stations in the South East. The Service Department of Piedmont received Approved Aircraft and Engine Repair Station Certificate #1340 in July, 1941, at which time it was the only aircraft service operation between Washington, D. C. and Altanta, Ga., having Magnaflux Inspection equipment and

other specialized overhaul equipment. Piedmont Aviation, Inc. has done, and is presently performing, large quantities of subcontract work for Army Air Force contractors. The shops are at present equipped to overhaul all types of aircraft. In addition to the overhaul and repair services, the shops are also engaged in manufacturing various specialized aircraft overhaul equipment.

[R. 7570]

In April, 1943, the company obtained a lease for operation on the Greensboro-High Point Airport, at which it conducted an AAF Air Crew Indoctrination Flight Training Program, in addition to the training programs being conducted at Winston-Salem. This training contract was completed in June, 1944.

In March, 1943, Piedmont was selected as one of the two Cross-Country Training Centers in the Second CAA Region. This particular program was for the training of Army students in cross-country flying, radio range and orientation flying, and night flying and allied ground school subjects exclusively. The aircraft used in this program were equipped especially for cross-country and night flying. In conducting this program Piedmont obtained invaluable experience in aircraft operation similar in many respects to scheduled air carrier operation. The execution of flight plans, dispatching, reporting over stations and radio fixes, and the preparation of flight logs was a routine procedure. The aircraft used on the majority of the cross-country flights were of the same model as is presently being used in scheduled airmail pick-up service. In addition to the operational experience gained by Piedmont, the flight instructor personnel of the company also received thousands of hours of specialized training not obtainable except with presently certificated carriers. In conducting this program a considerable amount of information was obtained which ultimately led to the selection of the routes applied for. From an operational point of view, the routes selected are extremely practical.

The key flight personnel of Piedmont have had extensive experience in cross-country flying and are particularly well

acquainted with operating conditions and landing and emergency field facilities throughout the states for which service is proposed, which is a most important factor when considering airmail scheduled pick up operation. The tsaining flights conductesl were over precisely the same territory which Piedmont proposes to serve with regularly scheduled airmail pick-up and passenger service.

During the year 1941 afone Piedmont conducted 41,874 miles of charter operation, most of which was also over the territory for which scheduled operation is proposed. All of this mileage was flown without a single accident. In order to conduct a successful charter operation, the passengers' comfort and convenience is of prime importance, just as it is in scheduled operation. Therefore, it may be assumed that Piedmont has had sufficient experience in dealing with the public as air passengers to conduct a successful scheduled air service for passengers.

The experience and successful record of Piedmont Aviation, Inc. seems to be sufficient evidence that the organization has the ability, facilities, key personnel and "know how" to undertake the operation of scheduled air service with every assurance of success.

[R. 7571]

EXHIBIT PI-5

Equipment and Employees

Piedmont Aviation, Inc. does not at the present time own any Stinson SR10C airplanes, which it proposes to use in the operation of the pick-up routes. It does, however, own one Stinson SR9C and one Stinson SR7B airplane which are quite similar to the model proposed to be used. Piedmont has an option on three Stinson SR10C airplanes at the present time and it is felt that the necessary additional airplanes will be available by January 1st, 1946.

The company does not presently own any aircraft suitable for local passenger service.

Approximately 50% of the required furniture and fixtures necessary to conduct the proposed operation are now owned. All of the shop equipment and tools necessary are presently owned with but few minor exceptions. Some special tools will need to be purchased.

The radio and station communication equipment is not presently owned, however the required specialized equipment and a completely furnished radio shop are now available for service of communications equipment.

The pick-up and ground station equipment is to be purchased or rented from All-American Aviation, Inc.

At the present time we have available four pilots, three of whom have instrument ratings, who instructed in the Cross-Country Training Programs conducted by the company. Twenty-two additional pilots who were employed by Piedmont on the Cross-Country Program are now flying in the Army Air Forces Air Transport Command or for scheduled airlines. All of these have requested reemployment at the end of the war for duty on the proposed Piedmont scheduled operation. In addition to this number, there are several hundred graduates of our Cross-Country school who are now serving with the Armed Forces, many of whom have likewise filed applications for employment with Piedmont Aviation. The required number of pilots will easily be obtainable, all of whom are familiar with the territory to be served, and the airplane to be used in mail pick-up operation. Several pilots requesting employment have had experience flying aircraft suitable for use over the proposed passenger routes.

Nine licensed A & E mechanics are presently employed and will be available for servicing aircraft used in the proposed operation. There are 28 additional specialized mechanics or unlicensed mechanics presently employed. One licensed radio technician is presently employed.

EXHIBIT PI-6

[R. 7572]

Availability of Funds

The necessary capital funds of approximately One Million One Hundred Thousand Dollars ($1,100,000.00) is to be made available by, (1) the issuance of Seventy Thousand (70,000) shares of common stock, Ten Dollar ($10.00) par value, and (2) by borrowed capital in the amount of approximately Four Hundred Thousand Dollars ($400,000.00).

Stock will be sold to private individuals, all of whom will be citizens of the United States of America.

The second page of this exhibit (PI-6, R. 7573) consists of a letter from W. L. Webb, Vice President of Wachovia Bank & Trust Company, Winston-Salem, North Carolina, to Piedmont, advising that the Bank is willing, upon certain conditions, to loan Piedmont Aviation, Inc., up to Four Hundred Thousand Dollars ($400,000.00).

[R. 7574]

EXHIBIT PI-7

Flight Log Excerpts of Four Piedmont Pilots

Pages 2 and 3 of this exhibit list the number of trips made by four Piedmont flight instructors in conducting cross-country training flights, and the number of the proposed route which would serve the various points.

Only four log books of the instructor personnel were readily available, but it is felt that this number is sufficient to give a fair representation of the experience of the company in operating aircraft throughout the territory for which it proposes scheduled operation.

Landings were not made at all points on every trip. These figures do not include the substantial amount of charter operations of the company.

[R. 7575]

Flight Log Excerpts of Four Piedmont Pilots

Winston-Salem to:	No. of Trips	Points Served by "PA" (Pick-Up) Route
Albemarle, N. C.	3	2
Anderson, S. C.	10	3
Asheboro, N. C.	4	1
Asheville, N. C.	21	4, 8
Athens, Ga.	8	15
Atlanta, Ga.	46	3, 15
Augusta, Ga.	25	
Beaufort, N. C.	3	7
Beckley, W. Va.	8	13
Bennettsville, S. C.	9	
Blackstone, Va.	11	1, 10
Bristol, Tenn.	12	11
Burlington, N. C.	3	4
Camden, S. C.	15	12
Chapel Hill, N. C.	12	4
Charleston, S. C.	4	12
Charleston, W. Va.	11	13
Charlotte, N. C.	40	1, 2, 3, 6, 8, 12
Chattanooga, Tenn.	3	
Charlottesville, Va.	4	10
Cherry Point, N. C.	8	7
Cincinnati, Ohio	5	
Columbia, S. C.	55	12, 14, 15
Concord, N. C.	1	2
Danville, Va.	6	1, 10
Dillon, S. C.	2	14
Durham, N. C.	2	2, 4, 5, 7, 14
Elizabeth City, N. C.	3	5
Elkin, N. C.	8	13
Elkins, W. Va.	2	
Fayetteville, N. C.	18	14
Florence, S. C.	17	14
Galax, Va.	2	13
Gastonia, N. C.	2	8
Goldsboro, N. C.	11	7
Greensboro, N. C.	18	1, 4, 10
Greenville, N. C.	1	5
Greenville, S. C.	22	3

Winston-Salem to:	No. of Trips	Points Served by "PA" (Pick-Up) Rate
Georgetown, S. C.	6	
Hagerstown, Md.	1	9
Hendersonville, N. C.	1	8
Hickory, N. C.	7	4
High Point, N. C.	2	1
Huntington, W. Va.	1	
		[R. 7576]
Kingston, N. C.	4	7
Knoxville, Tenn.	22	8, 11
Lawrenceville, Va.	2	15
Lincolnton, N. C.	1	8
Lynchburg, Va.	48	10, 11
Lumberton, N. C.	34	6, 14
Maiden, N. C.	1	
Martinsville, Va.	1	9
Maxton, N. C.	7	6
Middlesboro, Ky.	3	
Morganton, N. C.	1	4
Myrtle Beach, S. C.	6	
New Bern, N. C.	2	7
Norfolk, Va.	1	1, 2, 5
Orangeburg, S. C.	17	12
Petersburg, Va.	2	1, 10
Pinehurst, N. C.	3	2
Pulaski, Va.	15	11, 13
Reidsville, N. C.	1	1, 10
Richmond, Va.	48	1, 10
Roanoke, Va.	33	9, 11
Rock Hill, S. C.	7	12
Raleigh, N. C.	73	2, 4
Rocky Mount, N. C.	12	5
Salisbury, N. C.	14	1
Savannah, Ga.	15	
Shelby, N. C.	1	8
Smithfield, N. C.	1	7
South Boston, Va.	13	1
Spartanburg, S. C.	19	3
Statesville, N. C.	13	4
Tri-Cities, Tenn.	4	11
Wadesboro, N. C.	2	6
Washington, D. C.	22	9, 10
Wilmington, N. C.	27	6, 7

Exhibit PI-8 (R. 7577-7579) is entitled *Flight Log and Flight Plan Forms* and consists of copies of the Flight Logs and Flight Plan Forms which Piedmont required each student enrolled in the cross-county Training Program to execute.

Exhibit PI-9 (R. 7579A-7581) is entitled *Aircraft Maintenance Forms* and consists of two Civil Aeronautics Administration Forms identified as follows: (1) Form ACA 526 (CPT-41) Budget Bureau No. 41-R094-42, and (2) Form ACA 529 (CPT-41) (Rev. 8-19-40).

EXHIBIT PI-10

[R. 7582]

Traffic Development Program

A definite plan of traffic development has been outlined both for the Airmail Pick-Up System and for the Mail, Passenger and Express Operation.

The exhibits consisting of financial data show that $3,500.00 is to be set aside for the purpose of stimulating the use of airmail over the pick-up routes, and $5,000.00 for stimulating the use of local air service by passengers.

In our study of methods to be used for development of airmail traffic, it was noted that the intermediate points on All-American's system dispatch approximately three times as much airmail as they receive. The fact that a large amount of advertising circulars sent out by first class mail contain return airmail cards or envelopes, the postage to be paid by the advertiser, is probably one reason for this unbalanced condition. Probably most airmail users from points off the mail route are not familiar with the fact that the smaller communities are served by direct airmail service, and consequently feel that airmail will not expedite delivery.

There are probably many other reasons, but from these our plan of development was begun.

The program includes various methods of advertising designed to stimulate the flow of airmail *into* the certificated points, as well as out of these points.

Local passenger developmental methods will follow generally that of any other type of carrier, with particular emphasis on local inter-city traffic. The plans include a considerable amount of publicity designed to acquaint long distance air travelers with the convenience of local air service from terminals to the smaller cities and vice versa.

Various other methods contemplated are, (1) the use of display cards, (2) personal solicitation to manufacturers and principal business concerns; (3) assist cities and towns with airport development and location, stressing the additional utility of airports located as close as possible to the business district, (4) preparation of various booklets for direct mailing, designed to acquaint the public with the safety, comfort and convenience of air travel, as well as others designed to present as simply as possible the technical aspects of airline operation.

Exhibits PI-11 and PI-12 (R. 7583-7589) consist of five pages of pictures and explanatory matter relating to photographs of Piedmont's operations and maintenance department.

CAB DOCKET NO. 1422

Exhibit PI-13
Page 1 of 3 Pages

PIEDMONT AVIATION, INC.

R. 7591

ALPHABETICAL LIST BY STATES OF TOWNS AND CITIES INVOLVED IN PROPOSED AIRMAIL PICK-UP ROUTES

State	City	Route
D. C.	1. Washington	9,10
GA.	1. Athens	15
	2. Atlanta	3,15
	3. Buford	3
	4. Cornelia	3
	5. Elberton	15
	6. Gainesville	3
	7. Lawrenceville	15
	8. Marietta	3
	9. Roswell	3
	10. Toccoa	3
	11. Winder	15
MD.	1. Frederick	9
	2. Hagerstown	9
	3. Williamsport	9
N. C.	1. Aberdeen*	2
	2. Albemarle	2
	3. Asheboro	1
	4. Asheville	4,8
	5. Beaufort	7
	6. Belmont*	8
	7. Benson*	14
	8. Bessemer City*	8
	9. Burgaw	7
	10. Burlington	4
	11. Canton	8
	12. Caroleen*	8
	13. Carthage	2
	14. Chadbourn*	6
	15. Chapel Hill	4
	16. Charlotte	1,2,3 6,8,12
	17. Cherry Point	7
	18. Clayton	7
	19. Cliffside	8
	20. Clinton	14
	21. Concord	2
	22. Conover*	4
	23. Cooleemee*	4
	24. Cornelius*	1
	25. Dallas*	8
	26. Davidson	1
	27. Draper*	9
	28. Dunn	14
	29. Durham	2,4,5 7,14
	30. Edenton	5
	31. Elizabeth City	5
N. C.	32. Elkin	13
	33. Elon College*	4
	34. Erwin	14
	35. Fairmont	14
	36. Fayetteville	14
	37. Forest City*	8
	38. Franklinton	2
	39. Gastonia	8
	40. Gibsonville	4
	41. Goldsboro	7
	42. Graham*	4
	43. Granite Falls*	4
	44. Greensboro	1,4,10
	45. Greenville	5
	46. Hamlet*	6
	47. Haw River*	4
	48. Hazelwood*	8
	49. Henderson	2
	50. Hendersonville	8
	51. Henrietta*	8
	52. Hertford	5
	53. Hickory	4
	54. High Point	1
	55. Jacksonville	7
	56. Jonesville*	13
	57. Kannapolis*	2
	58. Kernersville*	4
	59. Kings Mountain	8
	60. Kinston	7
	61. LaGrange	7
	62. Laurinburg	6
	63. Leaksville	9
	64. Lenoir	4
	65. Lexington	1
	66. Lincolnton	8
	67. Littleton	2
	68. Lumberton	6,14
	69. Madison	9
	70. Marion	4
	71. Mayodan*	9
	72. Maxton*	6
	73. Mebane	4
	74. Mocksville	4
	75. Monroe	6
	76. Mooresville	1
	77. Morehead City*	7
	78. Morganton	4
	79. Mount Airy	13
	80. Mount Holly*	8
	81. New Bern	7
	82. Newton	4

*MESSENGER STATIONS

PIEDMONT AVIATION, INC. R. 7592

ALPHABETICAL LIST BY STATES OF TOWNS AND CITIES INVOLVED IN PROPOSED AIRMAIL PICK-UP ROUTES

State	City	Route
N. C.	83. Oxford	2
	84. Pinehurst	2
	85. Plymouth	5
	86. Raleigh	2,4,5,7,14
	87. Reidsville	1,10
	88. Roanoke Rapids	2
	89. Rockingham	6
	90. Rocky Mount	5
	91. Roxboro	1
	92. Rutherfordton	8
	93. St. Pauls	14
	94. Salisbury	1
	95. Sanford	2
	96. Selma*	7
	97. Shelby	8
	98. Smithfield	7
	99. Southern Pines*	2
	100. Spencer*	1
	101. Spindale*	8
	102. Spray*	9
	103. Statesville	4
	104. Swannanoah	4
	105. Tarboro	5
	106. Thomasville	1
	107. Troy	2
	108. Tryon	8
	109. Valdese*	4
	110. Wadesboro	6
	111. Wake Forest	2
	112. Wallace	7
	113. Warrenton	2
	114. Washington	5
	115. Waynesville	8
	116. Weldon*	2
	117. Wendell	5
	118. Whiteville	6
	119. Williamston	5
	120. Wilmington	6,7
	121. Wilson	5
	122. Winston-Salem	4,9,10,13
S. C.	1. Abbeville	15
	2. Anderson	3
	3. Bamberg	12
	4. Belton*	3
	5. Bishopville	14
	6. Branchville	12
	7. Calhoun Falls	15
	8. Camden	12
	9. Charleston	12
	10. Chester	12

State	City	Route
S. C.	11. Clinton*	15
	12. Columbia	12,14,15
	13. Darlington	14
	14. Denmark*	12
	15. Dillon	14
	16. Florence	14
	17. Fountain Inn	3
	18. Fort Mill	12
	19. Gaffney	3
	20. Great Falls	12
	21. Greenville	3
	22. Greenwood	15
	23. Hartsville	14
	24. Kershaw	12
	25. Lancaster	12
	26. Latta*	14
	27. Laurens	15
	28. Marion	14
	29. Mullins	14
	30. Newberry	15
	31. Orangeburg	12
	32. Pelzer*	3
	33. Rock Hill	12
	34. St. George	12
	35. St. Matthews	12
	36. Seneca	3
	37. Simpsonville*	3
	38. Spartanburg	3
	39. Summerville	12
	40. Sumter	14
	41. Whitmire	15
	42. Williamston	3
	43. Winnsboro	15
	44. Woodruff	3
	45. York	3
TENN.	1. Alcoa*	8
	2. Bristol	11
	3. Bulls Gap	11
	4. Elizabethton*	11
	5. Greenville	11
	6. Jefferson City	11
	7. Johnson City	11
	8. Kingsport	11
	9. Knoxville	8,11
	10. Maryville*	8
	11. Mascot	11
	12. Morristown	11
	13. Newport	8
	14. Rogersville	11

*MESSENGER STATIONS

CAB DOCKET
NO. 1422

Exhibit P1-13
Page 3 of 3 Pages

R. 7593

PIEDMONT AVIATION, INC.

ALPHABETICAL LIST BY STATES OF TOWNS AND CITIES
INVOLVED IN PROPOSED AIRMAIL PICK-UP ROUTES

State	City	Route
VA.	1. Abingdon	11
	2. Alta Vista	10
	3. Ashland	10
	4. Bedford	11
	5. Blacksburg	11
	6. Blackstone	1,10
	7. Buena Vista	9
	8. Charlottesville	10
	9. Chase City	1
	10. Chatham	10
	11. Christiansburg*	11
	12. Clifton Forge	9
	13. Covington*	9
	14. Crewe	10
	15. Culpepper	10
	16. Danville	1,10
	17. Emporia	2
	18. Ettrick*	10
	19. Farmville	10
	20. Fieldale*	9
	21. Franklin	2
	22. Fries*	13
	23. Fortress Monroe*	1
	24. Front Royal	9
	25. Galax	13
	26. Hampton*	1
	27. Harrisonburg	9
	28. Hopewell	1,10
	29. Lexington	9
	30. Luray	9
	31. Lynchburg	10,11
	32. Mannasus	10
	33. Marion	11
	34. Martinsville	9
	35. Newport News	1
	36. Norfolk	1,2,5
VA.	37. Orange	10
	38. Petersburg	1,10
	39. Phoebus*	1
	40. Portsmouth	5
	41. Princeton	13
	42. Pulaski	11,13
	43. Radford	11
	44. Richmond	1,10
	45. Roanoke	9,11
	46. Rocky Mount	9
	47. Salem*	9,11
	48. Saltville	11
	49. Shenandoah	9
	50. South Boston	1
	51. Staunton	9
	52. Suffolk	2
	53. Victoria	1
	54. Virginia Beach	5
	55. Warrenton	10
	56. Waynesboro	9
	57. Williamsburg	1
	58. Winchester	9
	59. Wytheville	11
WEST VA.	1. Beckley	13
	2. Belle	13
	3. Bluefield	13
	4. Boomer*	13
	5. Charleston	13
	6. Eagle*	13
	7. Marmet*	13
	8. Martinsburg	9
	9. Montgomery	13
	10. Mount Hope*	13
	11. Mullens	13
	12. Oak Hill	13

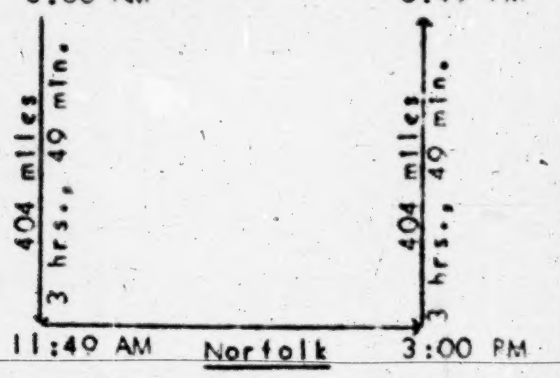
*MESSENGER STATIONS

PIEDMONT AVIATION, INC.

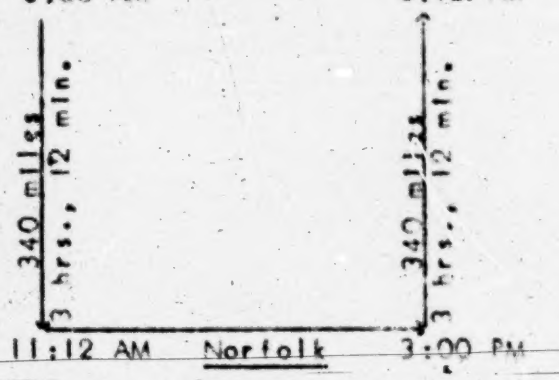
Proposed Schedules - Airmail Pick-Up Operation

R. 7594

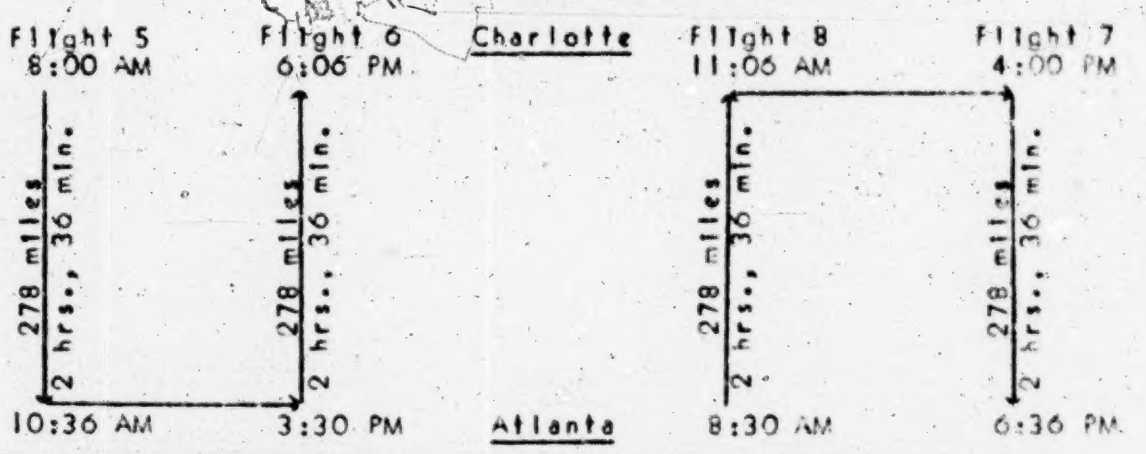
Route 1 - 808 miles
CHARLOTTE - NORFOLK
7 hours, 38 minutes daily



Route 2 - 680 miles
CHARLOTTE - NORFOLK
6 hours, 24 minutes daily

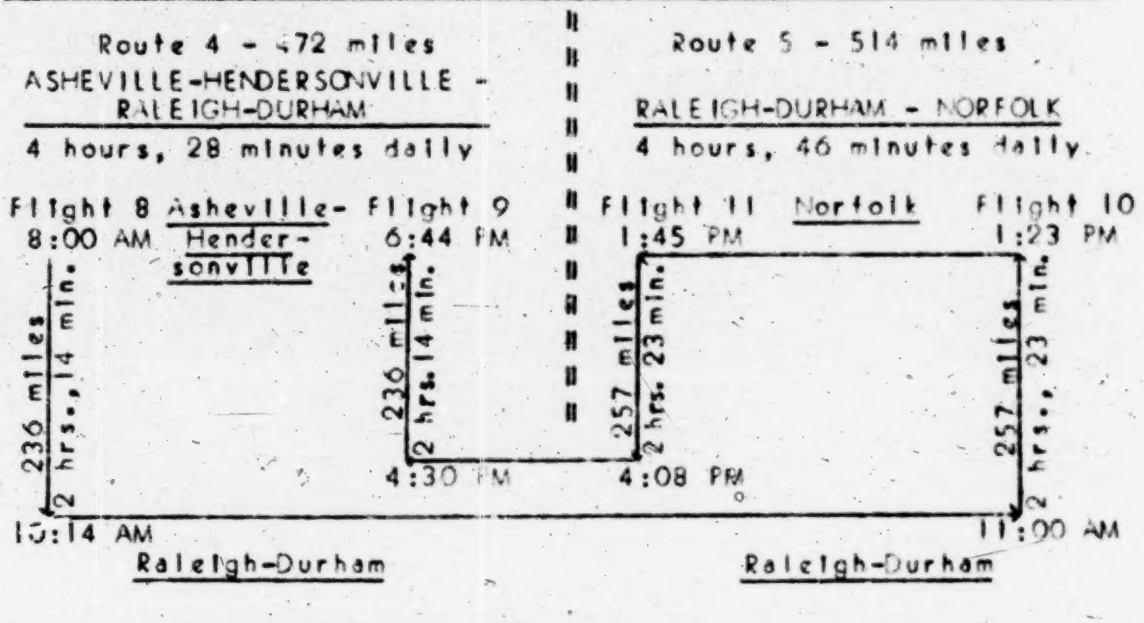


Route 3 - 1112 miles
CHARLOTTE - ATLANTA
10 hours, 24 minutes daily



Route 4 - 472 miles
ASHEVILLE-HENDERSONVILLE - RALEIGH-DURHAM
4 hours, 28 minutes daily

Route 5 - 514 miles
RALEIGH-DURHAM - NORFOLK
4 hours, 46 minutes daily



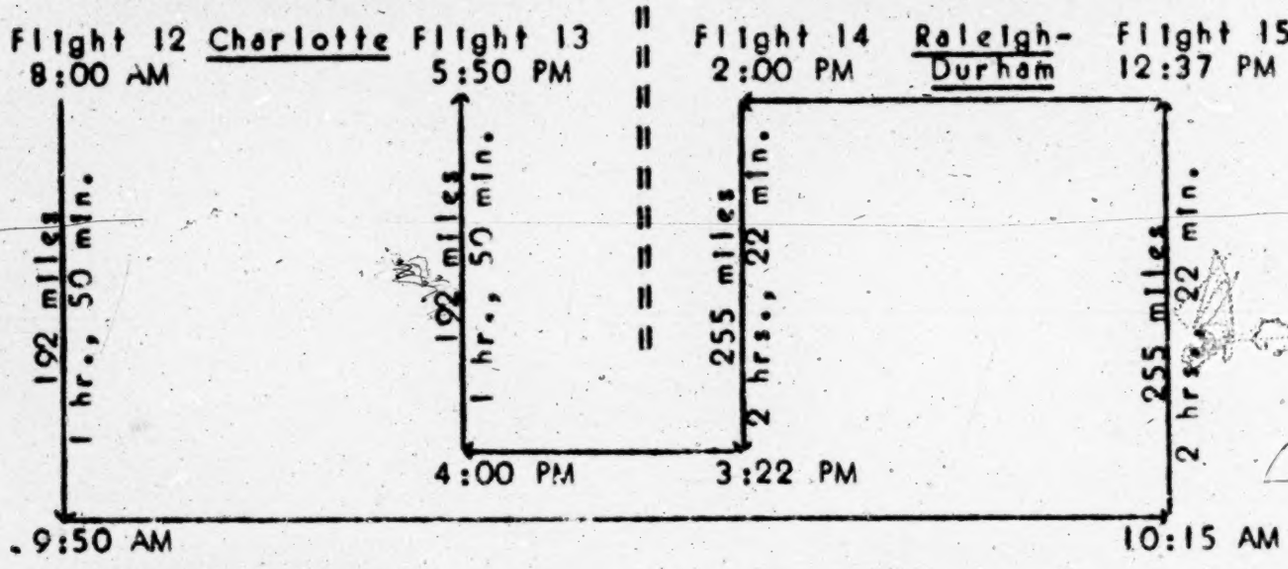
PIEDMONT AVIATION, INC.

R. 7595

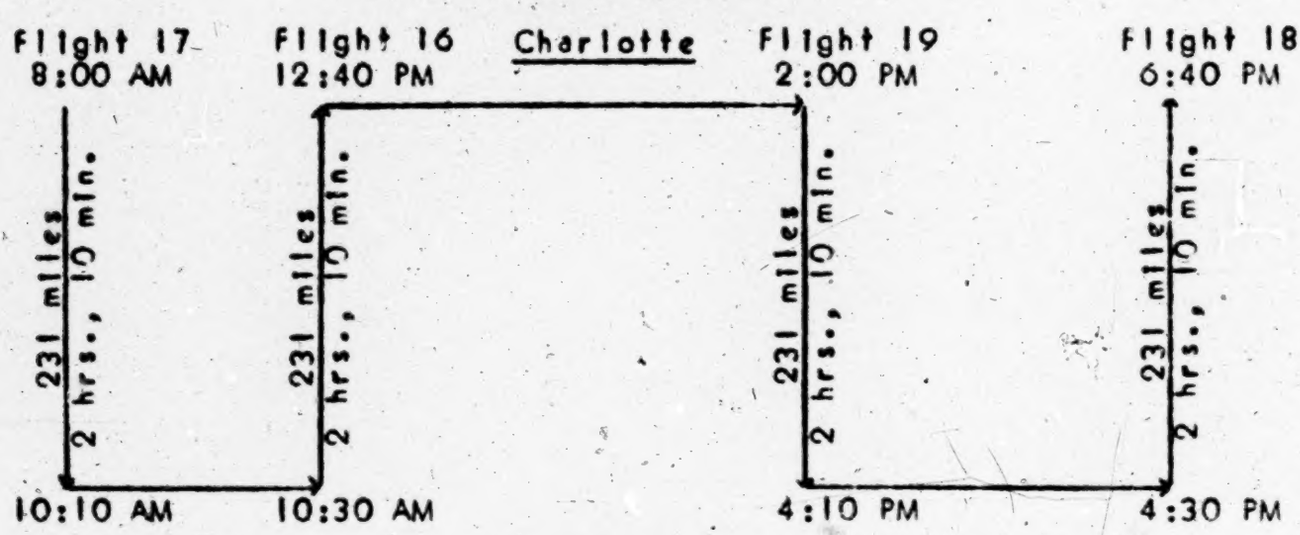
Proposed Schedules - Airmail Pick-Up Operation

Route 6 - 384 miles
CHARLOTTE - WILMINGTON
3 hours, 40 minutes daily

Route 7 - 510 miles
WILMINGTON - RALEIGH-DURHAM
4 hours, 44 minutes daily



Route 8 - 924 miles
CHARLOTTE - KNOXVILLE
8 hours, 40 minutes daily



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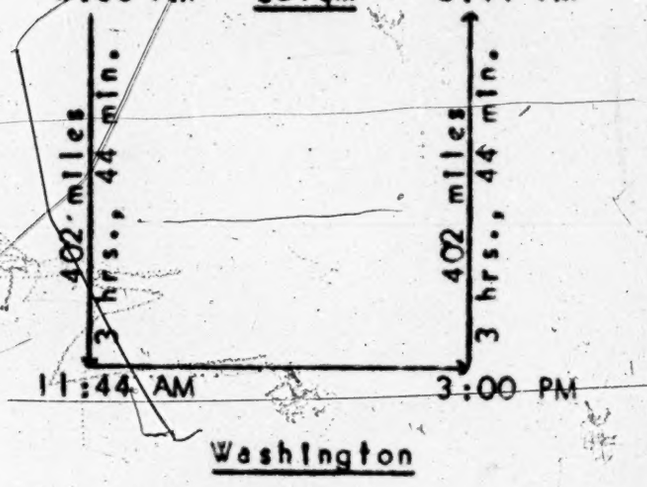
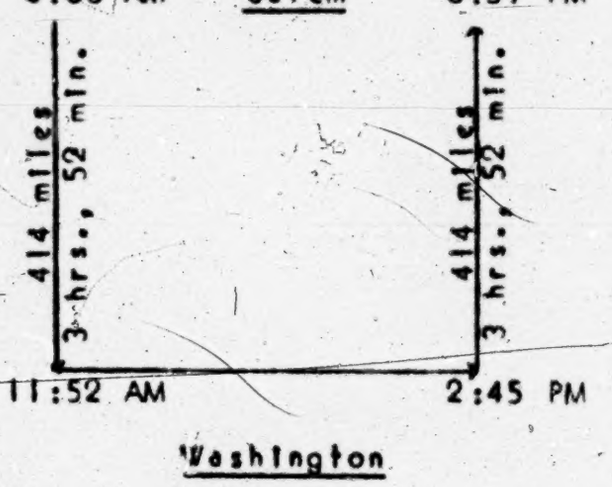
PIEDMONT AVIATION, INC. R. 7596

Proposed Schedules - Airmail Pick-Up Operation

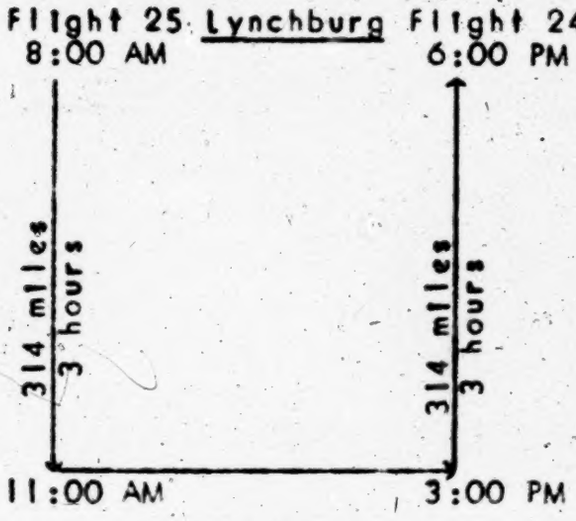
Route 9 - 804 miles
WINSTON-SALEM - WASHINGTON
7 hours, 28 minutes daily



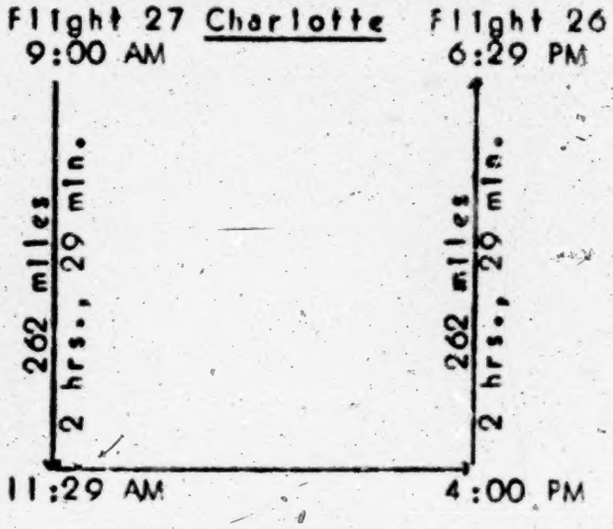
Route 10 - 828 miles
WINSTON-SALEM - WASHINGTON
7 hours, 44 minutes daily



Route 11 - 628 miles
LYNCHBURG - KNOXVILLE
6 hours daily



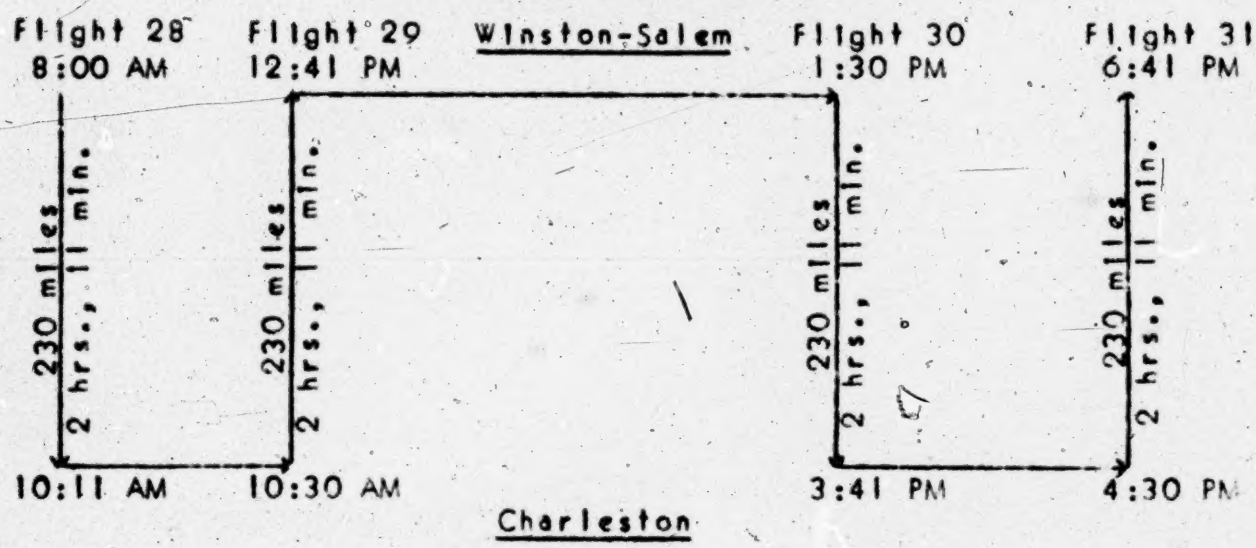
Route 12 - 524 miles
CHARLOTTE - CHARLESTON
4 hours, 58 minutes daily



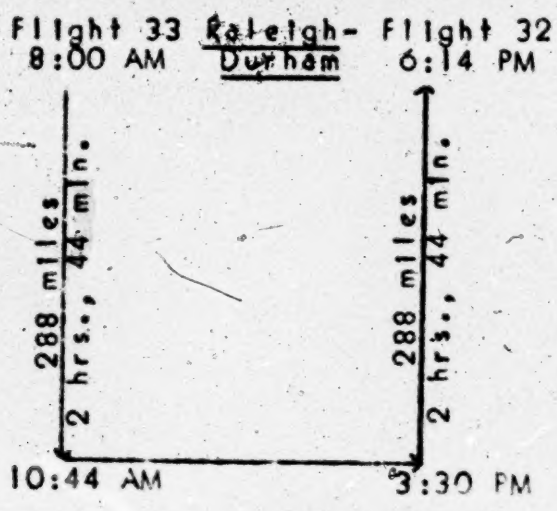
PIEDMONT AVIATION, INC. R. 7597

Proposed Schedules - Airmail Pick-Up Operation

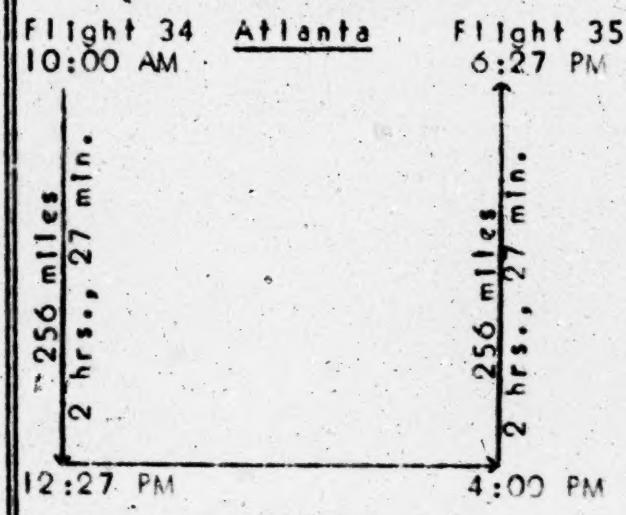
Route 13 - 920 miles
WINSTON-SALEM - CHARLESTON, W.VA.
8 hours, 44 minutes daily



Route 14 - 576 miles
RALEIGH-DURHAM - COLUMBIA
5 hours, 28 minutes daily



Route 15 - 512 miles
ATLANTA - COLUMBIA
4 hours, 54 minutes daily



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PIEDMONT AVIATION, INC.

R. 7598

CHARLOTTE - NORFOLK
Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 2 (Read Down)	ROUTE 1	Flight 1 (Read Up)
0	8:00 AM	Lv.....Charlotte.....Ar.	6:49
20	8:11	Lv.....Davidson.....Lv.	6:38
27	8:15	Lv.....Mooresville.....Lv.	6:34
44	8:25	Lv.....Salisbury.....Lv.	6:24
63	8:36	Lv.....Lexington.....Lv.	6:13
73	8:42	Lv.....Thomasville.....Lv.	6:07
92	8:53	Lv.....Asheboro.....Lv.	5:56
110	9:03	Lv.....High Point.....Lv.	5:46
122	9:10	Lv.....Greensboro.....Lv.	5:39
145	9:23	Lv.....Reidsville.....Lv.	5:26
169	9:36	Lv.....Danville.....Lv.	5:13
192	9:49	Lv.....Roxboro.....Lv.	5:00
214	10:01	Lv.....South Boston.....Lv.	4:48
240	10:16	Lv.....Chase City.....Lv.	4:33
258	10:26	Lv.....Victoria.....Lv.	4:23
272	10:34	Lv.....Blackstone.....Lv.	4:15
306	10:53	Lv.....Petersburg.....Lv.	3:56
315	10:58	Lv.....Hopewell.....Lv.	3:51
329	11:06	Lv.....Richmond.....Lv.	3:43
366	11:27	Lv.....Williamsburg.....Lv.	3:22
391	11:41	Lv.....Newport News.....Lv.	3:08
404	11:49	Ar.....Norfolk.....Lv.	3:00 PM

CHARLOTTE - NORFOLK
Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 4 (Read Down)	ROUTE 2	Flight 3 (Read Up)
0	8:00 AM	Lv.....Charlotte.....Ar.	6:12
26	8:15	Lv.....Concord.....Lv.	5:57
44	8:25	Lv.....Albemarle.....Lv.	5:47
62	8:35	Lv.....Troy.....Lv.	5:37
91	8:52	Lv.....Pinehurst.....Lv.	5:20
99	8:56	Lv.....Carthage.....Lv.	5:16
115	9:05	Lv.....Sanford.....Lv.	5:07
150	9:24	Lv.....Raleigh-Durham.....Lv.	4:48
167	9:34	Lv.....Wake Forest.....Lv.	4:38
177	9:40	Lv.....Franklinton.....Lv.	4:32
194	9:50	Lv.....Oxford.....Lv.	4:22
205	9:56	Lv.....Henderson.....Lv.	4:16
219	10:04	Lv.....Warrenton.....Lv.	4:08
232	10:11	Lv.....Littleton.....Lv.	4:01
246	10:19	Lv.....Roanoke Rapids.....Lv.	3:53
263	10:29	Lv.....Emporia.....Lv.	3:43
297	10:48	Lv.....Franklin.....Lv.	3:24
316	10:59	Lv.....Suffolk.....Lv.	3:13
340	11:12	Ar.....Norfolk.....Lv.	3:00

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PIEDMONT AVIATION, INC.

R. 7599

CHARLOTTE - ATLANTA
Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 5 (Read Down)	Flight 7	ROUTE 3	Flight 8 (Read Up)	Flight 6
0	8:00 AM	4:00 PM	Lv. Charlotte.....Ar.	11:06	6:06
24	8:13	4:13	Lv. York.....Lv.	10:53	5:53
47	8:26	4:26	Lv. Gaffney.....Lv.	10:40	5:40
67	8:37	4:37	Lv. Spartanburg...Lv.	10:29	5:29
81	8:45	4:45	Lv. Woodruff.....Lv.	10:21	5:21
90	8:50	4:50	Lv. Fountain Inn..Lv.	10:16	5:16
103	8:57	4:57	Lv. Greenville....Lv.	10:09	5:09
120	9:07	5:07	Lv. Williamston...Lv.	9:59	4:59
132	9:14	5:14	Lv. Anderson.....Lv.	9:52	4:52
154	9:26	5:26	Lv. Seneca.....Lv.	9:40	4:40
174	9:37	5:37	Lv. Toccoa.....Lv.	9:29	4:29
189	9:46	5:46	Lv. Cornelia.....Lv.	9:20	4:20
211	9:58	5:58	Lv. Gainesville...Lv.	9:08	4:08
227	10:07	6:07	Lv. Buford.....Lv.	8:59	3:59
247	10:18	6:18	Lv. Roswell.....Lv.	8:48	3:48
259	10:25	6:25	Lv. Marietta.....Lv.	8:41	3:41
278	10:36	6:36	Ar. Atlanta.....Lv.	8:30 AM	3:30 PM

ASHEVILLE-HENDERSONVILLE - RALEIGH-DURHAM
Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 8 (Read Down)	ROUTE 4	Flight 9 (Read Up)
0	8:00 AM	Lv...Asheville-Hendersonville.Ar.	6:44
11	8:06	Lv...Swannanoah.....Lv.	6:38
34	8:19	Lv...Marion.....Lv.	6:25
52	8:29	Lv...Morganton.....Lv.	6:15
66	8:37	Lv...Lenoir.....Lv.	6:07
81	8:46	Lv...Hickory.....Lv.	5:58
91	8:52	Lv...Newton.....Lv.	5:52
110	9:03	Lv...Statesville.....Lv.	5:41
130	9:14	Lv...Mocksville.....Lv.	5:30
152	9:26	Lv...Winston-Salem.....Lv.	5:18
168	9:35	Lv...Greensboro.....Lv.	5:09
189	9:47	Lv...Gibsonville.....Lv.	4:57
196	9:51	Lv...Burlington.....Lv.	4:53
205	9:56	Lv...Mebane.....Lv.	4:48
220	10:05	Lv...Chapel Hill.....Lv.	4:39
236	10:14	Ar...Raleigh-Durham.....Lv.	4:30 PM

PIEDMONT AVIATION, INC. R. 7600

RALEIGH-DURHAM - NORFOLK

Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 10 (Read Down)	ROUTE 5	Flight 11 (Read Up)
0	11:00 AM	Lv...Raleigh-Durham.....Ar.	4:08
24	11:13	Lv...Wendell.....Lv.	3:55
49	11:27	Lv...Wilson.....Lv.	3:41
66	11:37	Lv...Rocky Mount.....Lv.	3:31
81	11:46	Lv...Tarboro.....Lv.	3:22
103	11:58	Lv...Greenville.....Lv.	3:10
121	12:08 PM	Lv...Washington.....Lv.	3:00
141	12:19	Lv...Williamston.....Lv.	2:49
159	12:29	Lv...Plymouth.....Lv.	2:39
175	12:38	Lv...Edenton.....Lv.	2:30
186	12:44	Lv...Hertford.....Lv.	2:24
202	12:53	Lv...Elizabeth City.....Lv.	2:15
244	1:16	Lv...Virginia Beach.....Lv.	1:52
257	1:23	Ar...Norfolk.....Lv.	1:45 PM

CHARLOTTE - WILMINGTON

Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 12 (Read Down)	ROUTE 6	Flight 13 (Read Up)
0	8:00 AM	Lv...Charlotte.....Ar.	5:50
26	8:15	Lv...Monroe.....Lv.	5:35
53	8:31	Lv...Wadesboro.....Lv.	5:19
72	8:42	Lv...Rockingham.....Lv.	5:08
92	8:53	Lv...Laurinburg.....Lv.	4:57
120	9:09	Lv...Lumberton.....Lv.	4:41
147	9:25	Lv...Whiteville.....Lv.	4:25
192	9:50	Ar...Wilmington.....Lv.	4:00 PM

WILMINGTON - RALEIGH-DURHAM

Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 15 (Read Down)	ROUTE 7	Flight 14 (Read Up)
0	10:15 AM	Lv...Wilmington.....Ar.	4:22
20	10:26	Lv...Burgaw.....Lv.	4:11
33	10:33	Lv...Wallace.....Lv.	4:04
65	10:51	Lv...Jacksonville.....Lv.	3:46
109	11:16	Lv...Beaufort.....Lv.	3:21
128	11:27	Lv...Cherry Point.....Lv.	3:10
144	11:36	Lv...New Bern.....Lv.	3:01
175	11:53	Lv...Kinston.....Lv.	2:44
187	12:00	Lv...La Grange.....Lv.	2:37
198	12:06 PM	Lv...Goldsboro.....Lv.	2:31
220	12:18	Lv...Smithfield.....Lv.	2:19
231	12:24	Lv...Clayton.....Lv.	2:13
255	12:37	Ar...Raleigh-Durham.....Lv.	2:00 PM

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PIEDMONT AVIATION, INC. R. 7601

CHARLOTTE - KNOXVILLE
Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 17 (Read Down)	Flight 19	ROUTE 8	Flight 16 (Read Up)	Flight 18
0	8:00 AM	2:00 PM	Lv..Charlotte.....Ar.	12:40	6:40
15	8:09	2:09	Lv..Gastonia.....Lv.	12:31	6:31
30	8:18	2:18	Lv..Lincolnton....Lv.	12:22	6:22
45	8:27	2:27	Lv..Kings Mt.....Lv.	12:13	6:13
56	8:33	2:33	Lv..Shelby.....Lv.	12:07 PM	6:07
69	8:40	2:40	Lv..Cliffside.....Lv.	12:00	6:00
80	8:46	2:46	Lv..Rutherfordton.Lv.	11:54	5:54
101	8:58	2:58	Lv..Tryon.....Lv.	11:42	5:42
121	9:09	3:09	Lv..Asheville-Hendersonville...Lv.	11:31	5:31
142	9:21	3:21	Lv..Canton.....Lv.	11:19	5:19
151	9:26	3:26	Lv..Waynesville...Lv.	11:14	5:14
185	9:45	3:45	Lv..Newport.....Lv.	10:55	4:55
231	10:10	4:10	Ar..Knoxville.....Lv.	10:30 AM	4:30 PM

WINSTON-SALEM - WASHINGTON
Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 20 (Read Down)	ROUTE 9	Flight 21 (Read Up)
0	8:00 AM	Lv...Winston-Salem.....Ar.	6:44
23	8:13	Lv...Madison.....Lv.	6:31
37	8:21	Lv...Leakesville.....Lv.	6:23
51	8:29	Lv...Martinsville.....Lv.	6:15
71	8:40	Lv...Rocky Mount.....Lv.	6:04
93	8:52	Lv...Roanoke.....Lv.	5:52
126	9:10	Lv...Clifton Forge.....Lv.	5:34
150	9:23	Lv...Lexington.....Lv.	5:21
156	9:26	Lv...Buena Vista.....Lv.	5:18
191	9:45	Lv...Waynesboro.....Lv.	4:59
201	9:51	Lv...Staunton.....Lv.	4:53
221	10:02	Lv...Harrisonburg.....Lv.	4:42
234	10:09	Lv...Shenandoah.....Lv.	4:35
249	10:18	Lv...Luray.....Lv.	4:26
271	10:30	Lv...Front Royal.....Lv.	4:14
289	10:40	Lv...Winchester.....Lv.	4:04
311	10:52	Lv...Martinsburg.....Lv.	3:52
332	11:04	Lv...Hagerstown.....Lv.	3:40
357	11:18	Lv...Frederick.....Lv.	3:26
402	11:44	Ar...Washington.....Lv.	3:00 PM

PIEDMONT AVIATION, INC. R. 7602

WINSTON-SALEM - WASHINGTON

Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 22 (Read Down)	ROUTE 10	Flight 23 (Read Up)
0	8:00 AM	Lv...Winston-Salem.....Ar.	6:37
16	8:09	Lv...Greensboro.....Lv.	6:28
39	8:22	Lv...Reidsville.....Lv.	6:15
63	8:35	Lv...Danville.....Lv.	6:02
80	8:45	Lv...Chatham.....Lv.	5:52
100	8:56	Lv...Alta Vista.....Lv.	5:41
115	9:05	Lv...Lynchburg.....Lv.	5:31
159	9:30	Lv...Farmville.....Lv.	5:07
177	9:40	Lv...Crewe.....Lv.	4:57
186	9:45	Lv...Blackstone.....Lv.	4:52
219	10:03	Lv...Petersburg.....Lv.	4:34
228	10:08	Lv...Hopewell.....Lv.	4:29
242	10:16	Lv...Richmond.....Lv.	4:21
262	10:27	Lv...Ashland.....Lv.	4:10
314	10:56	Lv...Charlottesville.....Lv.	3:41
337	11:09	Lv...Orange.....Lv.	3:28
355	11:19	Lv...Culpepper.....Lv.	3:18
374	11:30	Lv...Warrenton.....Lv.	3:07
390	11:39	Lv...Manassas.....Lv.	2:58
414	11:52	Ar...Washington.....Lv.	2:45 PM

LYNCHBURG - KNOXVILLE

Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 25 (Read Down)	ROUTE 11	Flight 24 (Read Up)
0	8:00 AM	Lv...Lynchburg.....Ar.	6:00
17	8:10	Lv...Bedford.....Lv.	5:50
42	8:24	Lv...Roanoke.....Lv.	5:36
66	8:37	Lv...Blacksburg.....Lv.	5:23
76	8:43	Lv...Radford.....Lv.	5:17
90	8:51	Lv...Pulaski.....Lv.	5:09
107	9:01	Lv...Wytheville.....Lv.	4:59
132	9:15	Lv...Marion.....Lv.	4:45
147	9:24	Lv...Saltville.....Lv.	4:36
163	9:33	Lv...Abingdon.....Lv.	4:27
192	9:50	Lv...Tri-Cities.....Lv.	4:10
224	10:08	Lv...Greenville.....Lv.	3:52
243	10:19	Lv...Rogersville.....Lv.	3:41
253	10:25	Lv...Bulls Gap.....Lv.	3:35
264	10:31	Lv...Morristown.....Lv.	3:29
276	10:38	Lv...Jefferson City.....Lv.	3:22
291	10:47	Lv...Mascot.....Lv.	3:13
314	11:00	Ar...Knoxville.....Lv.	3:00 PM

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R. 7603

PIEDMONT AVIATION, INC.

CHARLOTTE - CHARLESTON, S. C.

Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 27 (Read Down)	ROUTE 12	Flight 26 (Read Up)
0	9:00 AM	Lv...Charlotte.....Ar.	6:29
15	9:09	Lv...Fort Mill.....Lv.	6:20
24	9:14	Lv...Rock Hill.....Lv.	6:15
38	9:22	Lv...Chester.....Lv.	6:07
58	9:33	Lv...Great Falls.....Lv.	5:56
70	9:40	Lv...Lancaster.....Lv.	5:49
85	9:49	Lv...Kershaw.....Lv.	5:40
104	10:00	Lv...Camden.....Lv.	5:29
136	10:18	Lv...Columbia.....Lv.	5:11
160	10:31	Lv...St. Matthews.....Lv.	4:58
174	10:39	Lv...Orangeburg.....Lv.	4:50
190	10:48	Lv...Bamberg.....Lv.	4:41
203	10:55	Lv...Branchville.....Lv.	4:34
217	11:03	Lv...St. George.....Lv.	4:26
243	11:18	Lv...Summerville.....Lv.	4:11
262	11:29	Ar...Charleston.....Lv.	4:00 PM

WINSTON-SALEM - CHARLESTON, W. VA.

Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 28 (Read Down)	Flight 30 (Read Down)	ROUTE 13	Flight 29 (Read Up)	Flight 31 (Read Up)
0	8:00 AM	1:30 PM	Lv..Winston-Salem....Ar.	12:41	6:41
36	8:20	1:50	Lv..Elkin.....Lv.	12:21	6:21
57	8:32	2:02	Lv..Mount Airy.....Lv.	12:09 PM	6:09
77	8:43	2:13	Lv..Galax.....Lv.	11:58	5:58
104	8:59	2:29	Lv..Pulaski.....Lv.	11:42	5:42
132	9:15	2:45	Lv..Bluefield.....Lv.	11:26	5:26
141	9:20	2:50	Lv..Princeton.....Lv.	11:21	5:21
161	9:31	3:01	Lv..Mullins.....Lv.	11:10	5:10
179	9:41	3:11	Lv..Beckley.....Lv.	11:00	5:00
190	9:47	3:17	Lv..Oak Hill.....Lv.	10:54	4:54
207	9:57	3:27	Lv..Montgomery.....Lv.	10:44	4:44
219	10:04	3:34	Lv..Belle.....Lv.	10:37	4:37
230	10:11	3:41	Ar..Charleston.....Lv.	10:30 AM	4:30 PM

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R. 7604

PIEDMONT AVIATION, INC.

RALEIGH-DURHAM - COLUMBIA

Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 33 (Read Down)	ROUTE 14	Flight 32 (Read Up)
0	8:00 AM	Lv...Raleigh-Durham.....Ar.	6:14
39	8:21	Lv...Dunn.....Lv.	5:53
65	8:33	Lv...Clinton.....Lv.	5:41
96	8:42	Lv...Fayetteville.....Lv.	5:32
113	8:48	Lv...St. Pauls.....Lv.	5:26
126	8:55	Lv...Lumberton.....Lv.	5:19
136	9:05	Lv...Fairmont.....Lv.	5:09
151	9:09	Lv...Dillon.....Lv.	5:05
166	9:18	Lv...Mullins.....Lv.	4:56
174	9:27	Lv...Marion.....Lv.	4:47
192	9:33	Lv...Florence.....Lv.	4:41
204	9:40	Lv...Darlington.....Lv.	4:34
215	9:50	Lv...Hartsville.....Lv.	4:24
230	10:07	Lv...Bishopville.....Lv.	4:07
251	10:22	Lv...Sumter.....Lv.	3:52
288	10:44	Lv...Columbia.....Lv.	3:30 PM

ATLANTA - COLUMBIA

Proposed Schedule - Airmail Pick-Up Operation

Cum. Miles	Flight 34 (Read Down)	ROUTE 15	Flight 35 (Read Up)
0	10:00 AM	Lv....Atlanta.....Ar.	6:27
32	10:18	Lv....Lawrenceville.....Lv.	6:09
47	10:27	Lv....Winder.....Lv.	6:00
70	10:40	Lv....Athens.....Lv.	5:47
99	10:57	Lv....Elberton.....Lv.	5:30
114	11:06	Lv....Calhoun Falls.....Lv.	5:21
127	11:13	Lv....Abbeville.....Lv.	5:14
139	11:20	Lv....Greenwood.....Lv.	5:06
162	11:33	Lv....Laurens.....Lv.	4:54
183	11:45	Lv....Whitmire.....Lv.	4:42
198	11:54	Lv....Newberry.....Lv.	4:33
229	12:11 PM	Lv....Winnsboro.....Lv.	4:16
256	12:27	Ar....Columbia.....Lv.	4:00 PM

Exhibit PI-15 (R. 7605) is a map showing proposed air-mail pick-up routes, conforming to Piedmont's amended application to the Board.

EXHIBIT PI-16

[R. 7607]

The South Atlantic Trade Area

A Preliminary Statement by Dr. C.K. Brown

The definition of a trade area is never an easy matter. Loose and general statements concerning the territory that belongs to a given center are superficial since they neglect the considerable degree of interpenetration and overlapping that is always found when the trade of adjacent centers is analyzed. In some instances a trade area can best be thought of in terms of the whole area lying around a given focal center. In other instances it can best be treated as the area lying between certain centers of primary importance. The South Atlantic Trade Area falls in the latter category.

The South Atlantic Trade Area, as the term is used in this analysis, roughly embraces the states of Virginia, North Carolina, and South Carolina. At the northern end this area is rather narrow in the East-West direction, but it widens as one proceeds southward, reaching its greatest width, some 400 miles or more, in North Carolina. The Appalachian Mountain Range forms a rather broad and irregular boundary of the area on the west. Because of the peculiarities of this range, certain points west of the main ridges occupy positions of special importance relative to the area. Thus, Knoxville, which lies outside the area, approximately where the orbits of Atlanta and Cincinnati touch, is important to the South Atlantic Trade Area because of the long established routes of communication from Roanoke through Southwest Virginia and from Asheville across Western North Carolina. Similarly, Charleston, West Virginia, which lies approximately where the orbits of Cincinnati and Pittsburgh touch, is directly related to the Virginia cities by a long established rail route and is important to the whole

Southeastern section, not only because it is a center of the soft coal industry, but because it is a gateway to the Ohio River and the whole Middle West, through which important routes, notably air routes, pass. At the Southern end the South Atlantic Trade Area, as here defined, is bounded by a line from Charleston, South Carolina, to Atlanta. The territory south of this line lies definitely in the hinterland of Atlanta.

Centers of trade, travel, and communication are commonly of three types. First, there is the unitary center, consisting of a single city, drawing for some distance from the territory on all sides. Second, there is the satellite center, consisting of an important city with one or more smaller cities situated so close by that they do not greatly impede the flow into the main center; that is to say, the traffic from beyond the satellite points tends to flow through them to the main center. Third, there is the binary center, consisting of two cities so placed that relatively little traffic can be supplied by the area between them and so nearly equal in economic importance that each largely insulates the other from the area on one side of it; that is, relatively little traffic flows through the one to the other. (It is not impossible to have three or more centers in such a relationship, but the occurrence of multiple centers of this sort is rather rare, while the binary center is fairly common.)

[R. 7608]

In the South Atlantic Trade Area Atlanta, Columbia, Charleston, Charlotte, and Asheville, for example, are unitary centers. Richmond has an important satellite in Petersburg, while Norfolk has several in Newport News, Portsmouth, and Suffolk. A considerable number of binary centers are found in the area, notably Lynchburg-Roanoke, Raleigh-Durham, and Greenville-Spartanburg, for example. For certain purposes these binary cities may be considered as constituting a single trade focus. It should be pointed out that a satellite town may be larger in population and show higher economic

indices than some unitary centers or members of a binary combination. Thus Petersburg, a satellite of Richmond, is almost as large in population as Wilmington, a true unitary center, or Spartanburg, a member of a binary center. Its importance from the viewpoint of traffic is, however, quite different.

Trade centers, of course, vary considerably in importance. For convenience their importance may be described as being primary, secondary, tertiary, and so forth, although any classification on such a basis is bound to be arbitrary in certain respects. Criteria of importance are not easy to set up. Population alone is a poor guide. Retail trade is of very local significance. Postal receipts are undoubtedly important, as are financial data such as bank debits. Volume of wholesale trade is very significant, especially if related to volume of retail trade in such a way as to show how large a surrounding population outside the center is penetrated by the trade. Even when a combination of all these indices is used, it appears that there are certain factors of importance that are not readily expressible in statistical form. Thus centers of government such as Raleigh and Columbia and centers of education such as Charlottesville, Chapel Hill, and Athens, have an importance from the viewpoint of travel and communication that is not revealed by statistics of commodity trade. Similarly, resort centers, such as Asheville, possess a peculiar importance.

In the South Atlantic Trade Area the centers of primary importance are Baltimore-Washington, Richmond, Norfolk, Charlotte and Atlanta. Secondary centers are Lynchburg-Roanoke, Winston-Salem, Greensboro, Raleigh, Durham, Wilmington, Asheville, Greenville, Spartanburg, Columbia, and Charleston, South Carolina. Outlying related focal points are Knoxville and Charleston, West Virginia. An approximate geographical arrangement of these points is given below:

[R. 7609]

Focal Points: South Atlantic Trade Area

	Primary	Secondary
1.	Baltimore-Washington	
2.	Richmond	
3.	Norfolk	
4.		Lynchburg
5.		Roanoke
6.		Winston-Salem
7.		Greensboro
8.		Raleigh
9.		Durham
10.		Wilmington
11.	Charlotte	
12.		Asheville
13.		Greenville
14.		Spartanburg
15.		Columbia
16.		Charleston, S. C.
17.	Atlanta	

Outlying Related Focal Points

18.	Knoxville
19.	Charleston, W. Va.

Historically, Baltimore was the most important wholesale trade center of this area. Its connections with the James River basin via Chesapeake Bay and with the Valley of Virginia via Harper's Ferry, placed it in a strong position. The relative importance of Baltimore as a trade center has considerably declined in recent times, however. Richmond also has long held an important position in this trade. With the growth of the Middle West Atlanta has risen since 1875 to a position of great importance. Also with the development of the Piedmont Carolinas as a manufacturing region and with the coming of the automobile truck Charlotte has

assumed a position as a wholesale center that challenges those of Richmond and Atlanta. In fact, the evidence is to the effect that Charlotte wholesale houses serve a larger outlying population in the South Atlantic Trade Area than do those of Richmond or Atlanta. In the entire United States only Boston and San Francisco have a higher per capita wholesale trade than Charlotte. The following tables give some indication of the present relative importance of the primary and secondary trade centers in the South Atlantic Trade Area:

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PIEDMONT AVIATION, INC.

R. 7612

THE SOUTH ATLANTIC TRADE AREA

A Preliminary Statement by Dr. C.K. Brown

There is no financial center between Richmond and Atlanta that compares in importance with those two points. As shown by debits to individual accounts the financial centers of the South Atlantic Trade Area are as follows:

Cities with Bank Debits of more than $500,000,000 in 1942

	Bank Debits in Millions
Baltimore	$7,351
Washington	5,087
Richmond	3,086
Norfolk	1,288
Winston-Salem	727
Raleigh	653
Durham	702
Charlotte	1,489
Columbia	558
Atlanta	3,942

Cities in the South Atlantic Area with Postal Receipts of $600,000 or over in 1942

	Postal Receipts in Thousands
Baltimore	$7,573
Washington	19,109
Richmond	2,623
Norfolk	1,486
Raleigh	652
Charlotte	1,162
Columbia	756
Atlanta	5,240

For comparison the following figures for Knoxville, Tennessee, and Charleston, West Virginia, the closest outside related points, are given:

	Knoxville	Charleston
Population - 1940	111,580	67,914
Retail Sales - 1939		
Total	$52,702	$43,839
Per Capita	$473	$647
Wholesale Trade		
Total	$67,308	$67,762
Per Capita	$605	$1,000
Ratio of Wholesale to Retail	1.3	1.5
Bank Debits - 1942 (Millions)	$533	$830
Postal Receipts - 1942 (Thousands)	$788	$870

Exhibit PI-17 (R. 7613-7614) is entitled *Focal Points and Through Rail Routes.* Page 2 of this Exhibit is a map which shows the principal rail routes (3 or more schedules per day) in the South Atlantic Area and the focal points to be served.

Exhibit PI-18 (R. 7615) entitled *Population of States and Focal Points to be Reached in Southeastern States* indicates the population of Maryland, West Virginia, District of Columbia, Virginia, North Carolina, South Carolina, Georgia and Tennessee, and the cities of Charleston, Washington, D. C., Richmond, Norfolk, Lynchburg, Roanoke, Raleigh, Durham, Greensboro, Winston-Salem, Asheville, Charlotte, Wilmington, Spartanburg, Greenville, Columbia, Charleston, Atlanta, Knoxville: for the years 1900, 1920, 1940 and the percentage of increase in population from 1900 to 1920, and from 1920 to 1940 with regard to each state and city.

Exhibit PI-18A (R. 7616-7618) is entitled *List of Principal Educational Institutions in Cities on Proposed "PA" Routes.*

Exhibit PI-19 (R. 7619) entitled *Retail Trade of State and Focal Points 1939* indicates the amount of retail trade for each of the states and cities listed in Exhibit PI-18, and indicates the amount of retail trade per capita for each of the states and cities and the percentage of state retail sales found in focal points.

Exhibit PI-20 (R. 7620-7621) entitled *Wholesale Trade of States and Focal Points* lists the amount of sales 1929 and 1939 for each of the cities and states set forth in Exhibit PI-18; the percent change between 1929 and 1939; the percent of state sales, 1939, found in focal points; the per capita wholesale trade, 1939; ratio of wholesale to retail, 1939; and estimated net surrounding population in S. E. Area penetrated by wholesale trade.

Exhibit PI-21 (R. 7622) is entitled *Financial Data for Focal Points 1942* and lists Bank debits, and postal receipts —amount and per capita—for each of the cities listed in Exhibit PI-18.

Exhibit PI-22 (R. 7623) entitled *Manufacturing 1939 in States and at Focal Points* shows the number of establishments and the value of products for each of the states and cities listed in Exhibit PI-18.

[R. 7624]

EXHIBIT PI-23

Expository Statement to Precede Graph and Estimates of Mail to be Handled

Preliminary to the making of estimates of the volume of mail to be handled over Piedmont's proposed pick-up routes, a study was made of the experience of All-American Aviation, as shown in exhibits heretofore presented to the Board by that company. For the intermediate points on All-American's five routes (Pittsburgh, Harrisburg, and Philadelphia being excluded as being focal points) the most definite relationship seemed to be that between Postal Receipts and the number of pieces of mail handled. The 1942 Postal Receipts for 100 such points were plotted against the average monthly number of pieces of mail dispatched by air pick-up in 1942 at those points. This graph appears as the following exhibit. On double-logarithm paper it reveals an evident straight line relationship.

The line of best fit, by the least squares method, is given by the equation: $\log y = 0.544 \log x - 0.306$, where x is annual postal receipts in thousands of dollars and y is average monthly number of pieces of mail dispatched by pick-up.

This equation was then used as the basis of estimating the volume of mail to be dispatched at intermediate points on Piedmont's proposed lines during the first full year of operations. While the 1942 experience of All-American followed a period of promotion and development, it is believed that the use of these figures as a basis of estimate for a year that cannot be earlier than 1946 is, in view of the rapid developments of the present time, quite conservative. In this

connection it may be pointed out that the comparable 1943 figures for All-American were almost exactly twice those of 1942.

The graph of All-American's experience indicates that the smaller places furnish relatively a much greater volume of airmail for the pick-up routes than do the larger ones. It is neither necessary nor appropriate to offer explanations of this fact in the present exhibit. It is sufficient to say that it has been assumed that the same situation would obtain in the case of points that Piedmont proposes to serve by pick-up.

Owing to the wide difference between the focal points of All-American and those of Piedmont's proposed system, the experience of the former at points like Pittsburgh and Philadelphia offers an unsatisfactory clue to what might be expected at the smaller, more numerous focal points of the Southeastern area. The estimates for mail at Piedmont's focal points were therefore made on a basis that took into consideration these differences. First, because of their relatively small size and large number, they were treated in the same fashion as the intermediate points, except that in the case of certain closely placed or binary centers, such as Greensboro and Winston-Salem, Greenville and Spartanburg, and Raleigh and Durham, allowance was made for the fact that no mail is expected to move by air between the two points of any such pair. Second, to the figure so arrived at there was added the amount of one-third of the volume of mail dispatched at intermediate points, to cover the volume expected to be received at the intermediate points in accordance with All-American's experience. The result was to secure a total figure of mail to be handled by Piedmont, both dispatched and received, from all points on its proposed lines.

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Exhibit P1-23
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PIEDMONT AVIATION, INC. R. #626

CONVERSION FACTORS BASED ON EXPERIENCE OF
ALL-AMERICAN AVIATION ROUTE AM-49 FOR
ESTIMATING NUMBER OF PIECES OF AIRMAIL
TO BE DISPATCHED FROM INTERMEDIATE POINTS

If P.O. Receipts In 1942 were:	Average Monthly Number Pieces to be Dispatched can be Estimated at:
1000.	.400
1800.	.550
3250.	.935
3850.	.1,000
4600.	.1,130
5500.	.1,250
6500.	.1,365
7,000 - 8,000.	1,480
8,000 - 9,000.	1,580
9,000 - 10,000.	1,680
10,000 - 12,000.	1,820
12,000 - 14,000.	1,995
14,000 - 16,000.	2,150
16,000 - 18,000.	2,300
18,000 - 20,000.	2,450
20,000 - 25,000.	2,750
25,000 - 30,000.	3,000
30,000 - 35,000.	3,280
35,000 - 40,000.	3,550
40,000 - 50,000.	3,920
50,000 - 60,000.	4,370
60,000 - 70,000.	4,785
70,000 - 80,000.	5,175
80,000 - 90,000.	5,540
90,000 - 100,000.	5,885
100,000 - 120,000.	6,375
120,000 - 140,000.	6,980
140,000 - 160,000.	7,545
160,000 - 180,000.	8,075
180,000 - 200,000.	8,580
200,000 - 225,000.	9,120
225,000 - 250,000.	9,700
250,000 - 300,000.	.10,500
300,000 - 400,000.	.11,970
400,000 - 500,000.	.13,720
500,000 - 750,000.	.16,400
750,000 - 1,000,000.	.19,690
1,000,000 - 1,500,000.	.23,910

PIEDMONT AVIATION, INC.

ROUTE 1: CHARLOTTE TO NORFOLK AND RICHMOND VIA GREENSBORO (404 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	1939 RETAIL TRADE (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Davidson, N.C.	1550	3445(2)	13290	1995
Mooresville, N.C.	6682	1739	25398	3000
Salisbury, N.C.	19037	11085	117776*	6375
Lexington, N.C.	10550	4094	97698*	5885
Thomasville, N.C.	11041	2856	55364*	4370
Asheboro, N.C.	6981	3647	51954*	4370
High Point, N.C.	38495	13253	235303*	9690
Reidsville, N.C.	10387	4185	41451*	3920
Danville, Va.	32749	15719	177711*	8075
Roxboro, N.C.	4599	2292	21455	2750
South Boston, Va.	5252	3054	29594	3000
Chase City, Va.	1896	4773(1)	14419	2150
Victoria, Va.	1555	1681(1)	10572	1820
Blackstone, Va.	2699	3136(1)	79142*	5175
Petersburg, Va.	30631	13862	259734*	10500
Hopewell, Va.	8679	2643	51211*	4370
Williamsburg, Va.	3942	2307	66275*	4785
Newport News, Va.	37067	18893	360727*	11970
	233794		1708974	94500
POINTS SERVED BY MESSENGER:				
Cornelius, N.C.	1195		3250(3)	935
Spencer, N.C.	3072		9585	1680
Phoebus, Va.	3503		21174	2750
Fortress Monroe, Va.	2000		22079	2750
Hampton, Va.	5898		126491	6980
	15668		182579	15095
TOTAL	249462		1891553	109595
PER CAPITA	xx		7.6	.48
PER MILE OF ROUTE	618		4680	296

FOCAL POINTS:
Charlotte, N.C. :
Greensboro, N.C. : To Intermediate Points 36532 (a)
Richmond, Va. : To Focal Points and Beyond 100500 (b)
Norfolk, Va. :

GRAND TOTAL 246627
PER MILE OF ROUTE 610

*First Class Post Office
**Based on 1942 Experiences of AAA. See Exhibit PI-23.
(1) County
(2) County except Charlotte
(3) Estimated from Postmasters' Salary

Notes (a) and (b) apply to all routes
(a) Basis: 1/3 of number dispatched from intermediate points.
(b) Same as that used for intermediate points except it is assumed that no mail will move by air between Winston-Salem and Greensboro, Raleigh and Durham, and Spartanburg and Greenville

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Exhibit PI-24
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PIEDMONT AVIATION, INC.

ROUTE 2: CHARLOTTE TO NORFOLK VIA RALEIGH-DURHAM. (340 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	1939 RETAIL TRADE (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Concord, N.C.	15572	6773	70913*	5175
Albemarle, N.C.	4060	4648	36402	3550
Troy, N.C.	1861	2284(1)	10444	1620
Pinehurst, N.C.	1600	3708(2)	18193	2450
Carthage, N.C.	1381		11831	1820
Sanford, N.C.	4960	2994	40214*	3920
Wake Forest, N.C.	1562	5938(3)	15391	2150
Franklinton, N.C.	1273	2706(1)	7500(5)	1480
Oxford, N.C.	3991	2751	30017	3280
Henderson, N.C.	7647	5256	61371*	4785
Warrenton, N.C.	1147	2265(1)	13167	1995
Littleton, N.C.	1200	4329(4)	10028	1820
Roanoke Rapids, N.C.	8545	3000	37709	3550
Emporia, Va.	2735	1957	22648	2750
Franklin, Va.	3466	2160	32446	3280
Suffolk, Va.	11343	7032	81971*	5540
	72343		500545	49365
POINTS SERVED BY MESSENGER:				
Kannapolis, N.C.	12661		74626	5175
Weldon, N.C.	2341		11565	1820
Aberdeen, N.C.	1076		9474	1680
Southern Pines, N.C.	3225		29699	3000
	19303		125365	11675
TOTAL	91646		625910	61040
PER CAPITA	xxx		6.8	.67
PER MILE OF ROUTE	267		1880	178
FOCAL POINTS:				
Charlotte, N.C. : Raleigh-Durham, N.C. : Norfolk, Va. :	To Intermediate Points			20347 (a)
	To Focal Points and Beyond			71730 (b)
	GRAND TOTAL			153117
	PER MILE OF ROUTE			445

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit PI-23.
(1) County
(2) County except Southern Pines
(3) County except Raleigh
(4) County except Roanoke Rapids and Scotland Neck
(5) Estimated from Postmasters' Salary

PIEDMONT AVIATION, INC. R. 7629

ROUTE 3: CHARLOTTE TO ATLANTA
VIA SPARTANBURG AND GREENVILLE (278 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	1939 RETAIL TRADE (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
York, S.C.	3495	1265	15361	2150
Gaffney, S.C.	7636	3263	35657	3550
Woodruff, S.C.	3508	1019	13224	1995
Fountain Inn, S.C.	1346	8537(2)	7500(5)	1480
Williamston, S.C.	2509	305	4600(5)	1130
Anderson, S.C.	19424	8864	94553*	5885
Seneca, S.C.	2155	3323(3)	18065	2450
Toccoa, Ga.	5494	1979	34816	3280
Cornelia, Ga.	1808	2075(1)	10824	1820
Gainesville, Ga.	10243	6528	71181*	5175
Buford, Ga.	4191	936	12483	1995
Roswell, Ga.	1622	2280(4)	5500(5)	1250
Marietta, Ga.	8667	4041	58531*	4370
	72098		382295	36530
POINTS SERVED BY MESSENGER:				
Belton, S.C.	2119		12587	1995
Pelzer, S.C.	4000		7500(5)	1480
Simpsonville, S.C.	1298		5500(5)	1250
	7417		25587	4725
TOTAL	79515		407882	41255
PER CAPITA	xxx		5.1	.52
PER MILE OF ROUTE	264		1360	137

FOCAL POINTS:

Charlotte, N.C.	:		
Spartanburg, S.C.	:	To Intermediate Points	13752 (a)
Greenville, S.C.	:	To Focal Points and Beyond	92450 (b)
Atlanta, Ga.	:		
		GRAND TOTAL	147457
		PER MILE OF ROUTE	492

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit PI-23.
(1) County
(2) County except Greenville and Greer, S.C.
(3) County except Walhalla, S.C.
(4) County except Marietta, Ga.
(5) Estimated from Postmasters' Salary

PIEDMONT AVIATION, INC.

ROUTE 4: RALEIGH-DURHAM TO ASHEVILLE
VIA GREENSBORO AND WINSTON-SALEM (236 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Chapel Hill, N.C.	3654	1867	86097*	5540
Mebane, N.C.	2060	3210(2)	13696	1995
Burlington, N.C.	12198	9392	126001*	6980
Gibsonville, N.C.	1753		7500(4)	1480
Mocksville, N.C.	1607	1604	12262	1995
Statesville, N.C.	11440	5292	75105*	5175
Newton, N.C.	5407	1975	25935	3000
Hickory, N.C.	13487	6614	101642*	6375
Lenoir, N.C.	7598	3961	61703*	4785
Morganton, N.C.	7670	3778	45702*	3920
Marion, N.C.	2889	2848(1)	33443	3280
Swannanoah, N.C.	6556	4168(3)	16747	2300
	76319		605833	46825
POINTS SERVED BY MESSENGER:				
Graham, N.C.	4339		17535	2300
Haw River, N.C.	2330		3850(4)	1000
Elon College, N.C.	494		7500(4)	1480
Cooleemee, N.C.	1842		5500(4)	1250
Conover, N.C.	1195		8226	1580
Granite Falls, N.C.	1873		8007	1580
Valdese, N.C.	2615		17183	2300
	14658		67801	11490
TOTAL	90977		673634	58315
PER CAPITA	xxx		7.4	.64
PER MILE OF ROUTE	370		2740	238

FOCAL POINTS:

Raleigh-Durham, N.C. :
Greensboro, N.C. : To Intermediate Points 19438 (a)
Winston-Salem, N.C. : To Focal Points and Beyond 59700 (b)
Asheville, N.C. :

GRAND TOTAL 137543
PER MILE OF ROUTE 560

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit P1-23.
(1) County
(2) County except Burlington and Graham
(3) County except Asheville
(4) Estimated from Postmasters' Salary

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PIEDMONT AVIATION, INC.

ROUTE 5: RALEIGH-DURHAM TO NORFOLK (257 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Wendell, N.C.	1132	5938(2)	6500(3)	1365
Wilson, N.C.	19234	7914	82934*	5540
Rocky Mount, N.C.	25568	9765	101239*	6375
Tarboro, N.C.	7148	2997	42169*	3920
Greenville, N.C.	12674	6724	109864*	6375
Washington, N.C.	8569	3955	45168*	3920
Williamston, N.C.	3966	2179	22367	2750
Plymouth, N.C.	2461	1260(1)	15857	2150
Edenton, N.C.	3835	1513	20294	2750
Hertford, N.C.	1959	1184(1)	11411	1820
Elizabeth City, N.C.	11564	4334	65897*	4785
Virginia Beach, Va.	2600	3626(1)	69993*	4785
	100710		593693	46535
POINTS SERVED BY MESSENGER:				
Portsmouth, Va.	50745		402814	13720
TOTAL	151455		996507	60255
PER CAPITA	**		6.6	.40
PER MILE OF ROUTE	578		3800	230

FOCAL POINTS:

Raleigh-Durham, N.C.	: To Intermediate Points	20085	(a)
Norfolk, Va.	: To Focal Points and Beyond	47820	(b)
	GRAND TOTAL	128160	
	PER MILE OF ROUTE	488	

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit PI-23.
(1) County
(2) County except Raleigh
(3) Estimated from Postmasters' Salary

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PIEDMONT AVIATION, INC.

ROUTE 6: CHARLOTTE TO WILMINGTON (192 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Monroe, N.C.	6475	3254	59466*	4370
Wadesboro, N.C.	3587	2359	27653	3000
Rockingham, N.C.	3657	2887	34416	3280
Laurinburg, N.C.	5685	2158	29884	3000
Lumberton, N.C.	5803	4648	47916*	3920
Whiteville, N.C.	3011	6496(1)	25822	3000
	28218		225157	20570
POINTS SERVED BY MESSENGER:				
Hamlet, N.C.	5111		24148	2750
Maxton, N.C.	1656		14557	2150
Chadbourn, N.C.	1576		7500(2)	1480
	8343		46205	6380
TOTAL	36561		271362	26950
PER CAPITA	xxx		7.4	.74
PER MILE OF ROUTE	183		1360	135

FOCAL POINTS:

Charlotte, N.C.	: To Intermediate Points	8983	(a)
Wilmington, N.C.	: To Focal Points and Beyond	35880	(b)
	GRAND TOTAL	71813	
	PER MILE OF ROUTE	360	

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit P1-23.
(1) County
(2) Estimated from Postmasters' Salary

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NO. 1422

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R. 7633

PIEDMONT AVIATION, INC.

ROUTE 7: RALEIGH-DURHAM TO WILMINGTON (255 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Clayton, N.C.	1711	497(2)	8088	1580
Smithfield, N.C.	3678	2500	22615	2750
Goldsboro, N.C.	17274	7849	101209*	6375
La Grange, N.C.	1647	1571(3)	6500(4)	1365
Kinston, N.C.	15388	7377	72000*	5175
New Bern, N.C.	11815	5060	117720*	6375
Cherry Point, N.C.				
Beaufort, N.C.	3272	1234	17277	2300
Jacksonville, N.C.	873	1518(1)	35781	3550
Wallace, N.C.	1050	3853(1)	12147	1995
Burgaw, N.C.	1476	1320(1)	8850	1580
	58184		402187	33045
POINTS SERVED BY MESSENGER:				
Selma, N.C.	2007		10128	1820
Morehead City, N.C.	3695		22654	2750
	5702		32782	4570
TOTAL	63886		434969	37615
PER CAPITA	xxx		6.8	.59
PER MILE OF ROUTE	250		1730	147

FOCAL POINTS:

Raleigh-Durham, N.C.:	To Intermediate Points	12538	(a)
Wilmington, N.C. :	To Focal Points and Beyond	35880	(b)
	GRAND TOTAL	86033	
	PER MILE OF ROUTE	336	

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit PI-23.
(1) County
(2) County except Smithfield
(3) County except Kinston
(4) Estimated from Postmasters' Salary

R. 7634

PIEDMONT AVIATION, INC.

ROUTE 8: CHARLOTTE TO KNOXVILLE VIA ASHEVILLE (231 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Gastonia, N.C.	21313	8744	127915*	6980
Lincolnton, N.C.	4525	2280	27034	3000
Kings Mountain, N.C.	6547	1459	22729	2750
Cliffside, N.C.	1836	3253(2)	5500(4)	1250
Shelby, N.C.	14037	5854	85453*	5540
Rutherfordton, N.C.	2326	3253(2)	18364	2450
Tryon, N.C.	2043	1034(1)	18350	2450
Hendersonville, N.C.	5381	4600	57563*	4370
Canton, N.C.	5037	2904	29809	3000
Waynesville, N.C.	2940	2504(3)	33611	3280
Newport, Tenn.	3575	1678	20568	2750
	69560		446896	37820
POINTS SERVED BY MESSENGER:				
Belmont, N.C.	4356		28839	3000
Mount Holly, N.C.	2055		12312	1995
Bessemer City, N.C.	3567		8924	1580
Dallas, N.C.	1704		3850(4)	1000
Spindale, N.C.	3952		10471	1820
Forest City, N.C.	5035		19342	2450
Caroleen, N.C.	1740		3250(4)	935
Henrietta, N.C.	1400		1800(4)	550
Hazelwood, N.C.	1508		(5)	
Alcoa, Tenn.	5131		18973	2450
Maryville, Tenn.	5609		59046	4370
	36057		166807	20150
TOTAL	105617		613703	57970
PER CAPITA	xx		5.8	.55
PER MILE OF ROUTE	456		2650	250

FOCAL POINTS:

Charlotte, N.C.	To Intermediate Points	19323	(a)
Asheville, N.C.	To Focal Points and Beyond	52570	(b)
Knoxville, Tenn.			
	GRAND TOTAL	129863	
	PER MILE OF ROUTE	562	

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit P1-23.
(1) County
(2) County except Forest City and Spindale
(3) County except Canton
(4) Estimated from Postmasters' Salary
(5) Branch of Waynesville

PIEDMONT AVIATION, INC.

ROUTE 9: WINSTON-SALEM TO
WASHINGTON VIA ROANOKE (402 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR *MONTHLY**
Madison, N.C.	1683	6127(2)	20668	2750
Leakesville, N.C.	1886		22600	2750
Martinsville, Va.	10080	5204	76697*	5175
Rocky Mount, Va.	1366	2113(1)	18045	2450
Clifton Forge, Va.	6461	2598	30774	3280
Lexington, Va.	3914	2692	45080*	3920
Buena Vista, Va.	4335	1036	13834	1995
Waynesboro, Va.	7373	3790	56836*	4370
Staunton, Va.	13337	8010	105470*	6375
Harrisonburg, Va.	8768	7985	81946*	5540
Shenandoah, Va.	1829	1996(1)	7500(3)	1480
Luray, Va.	1511		18478	2450
Front Royal, Va.	3831	2797	25776	3000
Winchester, Va.	12095	8004	87078*	5540
Martinsburg, W.Va.	15063	6019	101114*	6375
Hagerstown, Md.	32491	17418	231046*	9700
Frederick, Md.	15802	11131	107736*	6375
	141825		1050678	73525
POINTS SERVED BY MESSENGER:				
Mayodan, N.C.	2323		6500(3)	1365
Draper, N.C.	2000		5500(3)	1250
Spray, N.C.	3000		11395	1820
Fieldale, Va.	1800		5500(3)	1250
Salem, Va.	5737		53725	4370
Covington, Va.	6300		48796	3920
Williamsport, Md.	1772		7500(3)	1480
	22932		138916	15455
TOTAL	164757		1189594	88980
PER CAPITA	xx		7.2	.54
PER MILE OF ROUTE	404		2920	218

FOCAL POINTS:

Winston-Salem, N.C. :	To Intermediate Points	29660 (a)
Roanoke, Va. :	To Focal Points and Beyond	138200 (b)
Washington, D. C. :		
	GRAND TOTAL	256940
	PER MILE OF ROUTE	630

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit PI-23.
(1) County
(2) County except Reidsville
(3) Estimated from Postmasters' Salary

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PIEDMONT AVIATION, INC.

ROUTE 10: WINSTON-SALEM TO WASHINGTON
VIA GREENSBORO, LYNCHBURG AND RICHMOND (414 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Reidsville, N.C.	10387	4185	41451*	3920
Danville, Va.	32749	15719	177711*	8075
Chatham, Va.	1230	4559(2)	19721	2450
Alta Vista, Va.	2919	1385	26211	3000
Farmville, Va.	3475	2644	41673*	3920
Crewe, Va.	2048	3136(1)	20863	2750
Blackstone, Va.	2699		79142*	5175
Petersburg, Va.	30631	13862	259734*	10500
Hopewell, Va.	8679	2643	51211*	4370
Ashland, Va.	1718	2422(1)	15491	2150
Charlottesville, Va.	19400	12740	176760*	8075
Orange, Va.	1980	3063(1)	28247	3000
Culpeper, Va.	2316	3133(1)	28414	3000
Warrenton, Va.	1651	4439(1)	28016	3000
Manassas, Va.	1302	3053(1)	16335	2300
	123184		1010989	65685
POINTS SERVED BY MESSENGER:				
Ettrick, Va.	1000		9559	1680
TOTAL	124184		1020548	67365
PER CAPITA	xx		8.2	.54
PER MILE OF ROUTE	293		2400	158

FOCAL POINTS:

Winston-Salem, N.C.			
Greensboro, N.C.	To Intermediate Points	22455	(a)
Lynchburg, Va.	To Focal Points and Beyond	179310	(b)
Richmond, Va.			
Washington, D.C.			
	GRAND TOTAL	269130	
	PER MILE OF ROUTE	635	

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit P1-23.
(1) County
(2) County except Danville

R. 7637

PIEDMONT AVIATION, INC.

ROUTE 11: LYNCHBURG TO KNOXVILLE
VIA ROANOKE (314 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Bedford, Va.	3973	2078	30261	3280
Blacksburg, Va.	2133	3825(2)	41148*	3920
Radford, Va.	6990	1871	64821*	4785
Pulaski, Va.	8792	3536	63046*	4785
Wytheville, Va.	4653	2700	29609	3000
Marion, Va.	5177	2196	35329	3550
Saltville, Va.	2650	774	16196	2300
Abingdon, Va.	3158	1726	27251	3000
Tri-Cities, Tenn.	63508	33158	579107*	16400
Greeneville, Tenn.	6784	4194	51124*	4370
Rogersville, Tenn.	2018	2454(1)	15434	2150
Bulls Gap, Tenn.	1200		3250(4)	935
Morristown, Tenn.	8050	3683	49126*	3920
Jefferson City, Tenn.	2576	1712(1)	15910	2150
Mascot, Tenn.	1800	3706(3)	3850(4)	1000
	123462		1025462	59545
POINTS SERVED BY MESSENGER:				
Christiansburg, Va.	2299		21571	2750
Salem, Va.	5737		53725	4370
Elizabethton, Tenn.	8516		43553	3920
	16552		118849	10040
TOTAL	140014		1144311	70585
PER CAPITA	xx		8.2	.50
PER MILE OF ROUTE	448		3680	226
FOCAL POINTS:				
Lynchburg, Va.	To Intermediate Points			23528 (a)
Roanoke, Va.	To Focal Points and Beyond			46810 (b)
Knoxville, Tenn.				
	GRAND TOTAL			140923
	PER MILE OF ROUTE			452

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit PI-23.
(1) County
(2) County except Radford
(3) County except Knoxville
(4) Estimated from Postmasters' Salary

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R. 7638

PIEDMONT AVIATION, INC.

ROUTE 12: CHARLOTTE TO
CHARLESTON, S.C. VIA COLUMBIA (262 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Fort Mill, S.C.	5960	1270	11277	1820
Rock Hill, S.C.	15009	6155	89329*	5540
Chester, S.C.	6392	3248	35317	3350
Great Falls, S.C.		1826(2)	7500(6)	1480
Lancaster, S.C.	4430	3080	31322	3280
Kershaw, S.C.	1264	1289(3)	9977	1680
Camden, S.C.	5747	2546	32569	3280
St. Matthews, S.C.	2187	1791(1)	9949	1680
Orangeburg, S.C.	10521	5547	58676*	4370
Bamberg, S.C.	3000	1201	12213	1995
Branchville, S.C.	1351	4038(4)	4600(6)	1130
St. George, S.C.	1908	1276(5)	8538	1580
Summerville, S.C.	3023	1158	18456	2450
	60792		329723	33635
POINTS SERVED BY MESSENGER:				
Denmark, S.C.	2056		8452	1580
TOTAL	62848		338175	35215
PER CAPITA	xx		5.4	.56
PER MILE OF ROUTE	243		1310	136
FOCAL POINTS:				
Charlotte, N.C. :				
Columbia, S.C. :	To Intermediate Points			11738 (a)
Charleston, S.C. :	To Focal Points and Beyond			57000 (b)
	GRAND TOTAL			103953
	PER MILE OF ROUTE			403

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit PI-23.
(1) County
(2) County except Chester
(3) County except Camden
(4) County except Orangeburg
(5) County except Summerville
(6) Estimated from Postmaster's Salary

CAB DOCKET NO. 1422

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PIEDMONT AVIATION, INC. R. 7639

ROUTE 13: WINSTON-SALEM TO CHARLESTON, W.VA. (230 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Elkin, N.C.	2734	1860	24920	2750
Mount Airy, N.C.	6286	3636	51670*	4370
Galax, Va.	3195	3053	29388	3000
Pulaski, Va.	5314	3536	25683	3000
Bluefield, W.Va.	20641	10019	169429*	8075
Princeton, W.Va.	7426	3127	37457	3550
Mullens, W.Va.	3026	4990(1)	13099	1995
Beckley, W.Va.	12852	10292	101463*	6375
Oak Hill, W.Va.	3213	2411	17901	2300
Montgomery, W.Va.	3231	2762	32067	3280
Belle, W.Va.	5000		13152	1995
	72918		516229	40690
POINTS SERVED BY MESSENGER:				
Jonesville, N.C.	1733		1800(2)	550
Fries, Va.	1677		5500(2)	1250
Mount Hope, W.Va.	2431		16572	2300
Eagle, W.Va.	1536		1000(3)	400
Boomer, W.Va.	1213		3850(2)	1000
Marmet, W.Va.	1814		3850(2)	1000
	10404		32572	6500
TOTAL	83322		548801	47190
PER CAPITA	xxx		6.2	.57
PER MILE OF ROUTE	354		2330	200

FOCAL POINTS:

Winston-Salem, N.C. :	To Intermediate Points	15747 (a)
Charleston, W.Va. :	To Focal Points and Beyond	33000 (b)
	GRAND TOTAL	96027
	PER MILE OF ROUTE	408

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit PI-23.
(1) County
(2) Estimated from Postmasters' Salary
(3) Fourth Class Post Office

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PIEDMONT AVIATION, INC. R. 7640

ROUTE 14: RALEIGH-DURHAM
TO COLUMBIA (288 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Dunn, N.C.	5256	2675	31294	3280
Clinton, N.C.	3557	3024	25391	3000
Fayetteville, N.C.	17428	9013	339294*	11970
St. Paul, N.C.	1923	6328(1)	6500(2)	1365
Lumberton, N.C.	5803	4648	47916*	3920
Fairmont, N.C.	1993	6328(1)	10276	1820
Dillon, S.C.	3867	2383	19993	2450
Mullins, S.C.	4392	2477	19032	2450
Marion, S.C.	5746	1888	19605	2450
Florence, S.C.	16054	9061	94363*	5885
Darlington, S.C.	6236	2498	29015	3000
Hartsville, S.C.	5399	3351	41528*	3920
Bishopville, S.C.	2095	2189	13660	1995
Sumter, S.C.	15874	8677	101706*	6375
	96523		799573	53880
POINTS SERVED BY MESSENGER:				
Erwin, N.C.	3500		8332	1580
Benson, N.C.	1837		8288	1580
Latta, S.C.	1334		6500(2)	1365
	6671		23120	4525
TOTAL	103194		822693	58405
PER CAPITA	xx		8.0	.57
PER MILE OF ROUTE	325		2590	184
FOCAL POINTS:				
Raleigh-Durham, N.C. :	To Intermediate Points			19464 (a)
Columbia, S.C. :	To Focal Points			40600 (b)
	GRAND TOTAL			118469
	PER MILE ROUTE			374

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit PI-23.
(1) County except Lumberton
(2) Estimated from Postmasters' Salary

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PIEDMONT AVIATION, INC. R. 7641

ROUTE 15: ATLANTA TO
COLUMBIA (256 MILES)

INTERMEDIATE PICK-UP POINTS	POPULATION 1940	RETAIL TRADE 1939 (000)	POSTAL RECEIPTS 1942	EST. NO. PIECES MAIL TO BE DISPATCHED BY AIR MONTHLY**
Lawrenceville, Ga.	2223	2043(1)	10157	1820
Winder, Ga.	3974	1327	23746	2750
Athens, Ga.	20650	9867	126969	6980
Elberton, Ga.	6188	2184	33019	3280
Calhoun Falls, S.C.	1832	989(2)	3850(3)	1000
Abbeville, S.C.	4930	1522	19781	2450
Greenwood, S.C.	13020	6372	69998	4785
Laurens, S.C.	6894	3069	30077	3280
Whitmire, S.C.	3272	759	8339	1580
Newberry, S.C.	7510	3450	34381	3280
Winnsboro, S.C.	3181	1785	17208	2300
	73674		377525	33505
POINTS SERVED BY MESSENGER:				
Clinton, S.C.	5704		30788	3280
TOTAL	79378		408313	36785
PER CAPITA	xxx		5.1	.46
PER MILE OF ROUTE	296		1520	137

FOCAL POINTS:

Atlanta, Ga.	:	To Intermediate Points	12262 (a)
Columbia, S.C.	:	To Focal Points and Beyond	68830 (b)
		GRAND TOTAL	117877
		PER MILE OF ROUTE	440

*First Class Post Office
**Based on 1942 Experiences of A.A.A. See Exhibit PI-23.
(1) County except Buford
(2) County except Abbeville
(3) Estimated from Postmasters' Salary

Exhibit PI-24-A (R. 7642) entitled *Airmail Potential by Routes* is a chart showing: Total number pieces of mail monthly, and per route mile, with regard to routes numbered from 1 to 15.

Exhibits PI-25 through PI-43 (R. 7644-7665) are accounting statements on air mail pick-up operations, each entitled or printed as follows:

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PIEDMONT AVIATION, INC.

R. 7644

AIRMAIL PICK-UP OPERATIONS

PRO-FORMA BALANCE SHEET

BEGINNING OF OPERATIONS

ASSETS

ACCOUNT NO.		
101	CASH	$150,000.00
102	PETTY CASH	1,500.00
110	MATERIALS AND SUPPLIES	21,111.95
111	MOTOR FUEL	1,500.00
112	LUBRICATING OIL	330.00
150	FLIGHT EQUIPMENT	374,910.00
155	OTHER PROPERTY AND EQUIPMENT	64,370.05
170	EXTENSION AND DEVELOPMENT	36,278.00
		$650,000.00

LIABILITIES AND NET WORTH

201	NOTES PAYABLE	$225,000.00
301	CAPITAL STOCK	425,000.00
		$650,000.00

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R. 7645

PIEDMONT AVIATION, INC.

AIRMAIL PICK-UP OPERATIONS

PRO-FORMA BALANCE SHEET

AT END OF ONE YEARS' OPERATIONS

ASSETS

ACCOUNT NO.			
101	Cash		$125,928.65
102	Petty Cash		1,500.00
104	Accounts Receivable		
	U. S. Mail Pay	$198,882.92	
	Other Accts. Receivable	2,446.70	201,329.62
110	Materials & Supplies		20,000.00
111	Motor Fuel		1,500.00
112	Lubricating Oil		330.00
150	Flight Equipment	$374,910.00	
251	Less-Reserve for Depreciation	67,483.80	307,426.20
155	Other Property and Equipment	$ 64,370.05	
271	Less-Reserve for Depreciation	11,441.47	52,928.58
160	Deferred Charges		2,400.00
170	Extension and Development		32,650.20
			$745,993.25

LIABILITIES AND NET WORTH

ACCOUNT NO.			
201	Notes Payable		$175,000.00
202	Accounts Payable		10,500.00
203	Accrued Liabilities		
	Salaries & Wages	$ 27,136.11	
	Taxes	55,857.14	
	Miscellaneous	500.00	83,493.25
301	Capital Stock		425,000.00
305	Surplus		52,000.00
			$745,993.25

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PIEDMONT AVIATION, INC.

AIRMAIL PICK-UP OPERATION

OPERATING PROPERTY AND EQUIPMENT

ACCOUNT NO.	DESCRIPTION	BEGINNING OF OPERATIONS	ADDITIONS	ACCRUED DEPRECIATION	NET BOOK VALUE AT END OF FIRST YEARS OPERATIONS
150	FLIGHT EQUIPMENT				
1501	Aircraft	$209,000.00		$37,620.00	$171,380.00
1502	Aircraft Engines	96,000.00		17,280.00	78,720.00
1503	Aircraft Propellers	28,800.00		5,184.00	23,616.00
1504	Aircraft Radio Equipment	22,000.00		3,960.00	18,040.00
1505	Flight Equipment - Miscellaneous	14,910.00		2,683.80	12,226.20
1508	Flight Equipment - Spare Parts	4,200.00		756.00	3,444.00
	TOTAL FLIGHT EQUIPMENT	$374,910.00	Ø	$67,483.80	$307,426.20
155	OTHER PROPERTY AND EQUIPMENT				
1551	Station Communication Equipment	$ 19,270.00		$ 3,468.60	$ 15,801.40
1552	Hangar and Shop Equipment	15,176.25		2,731.73	12,444.52
1554	Furniture and Fixtures	5,923.80		533.14	5,390.66
1555	Motor Vehicles and Equipment	4,600.00		828.00	3,772.00
1558	Miscellaneous Ground Equipment	19,400.00		3,880.00	15,520.00
	TOTAL OTHER PROPERTY & EQUIPMENT	$ 64,370.05	Ø	$11,441.47	$ 52,928.58

R. 7646

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PIEDMONT AVIATION, INC.

AIRMAIL PICK-UP OPERATION

AMORTIZATION OF EXTENSION AND DEVELOPMENT EXPENSES

ACCOUNT NO.	DESCRIPTION		
170/00	Actual Expenses to Date		
	Salaries	$4,254.00	
	Traveling Expenses	1,482.00	
	Other	242.00	$5,978.00
	Estimated Additional Expenses		
	Salaries	$2,000.00	
	Traveling Expenses	1,800.00	
	Other, including Printing	1,000.00	4,800.00
	Legal Fees		1,000.00
	Qualifying Expenses - Various States		1,000.00
	Economist Research Fee		1,000.00
	Establishment of Pick-Up Sites, Employment of Messenger, Etc.		2,500.00
	Familiarization Flights		
	Qualification of 29 Pilots over 4359 miles		20,000.00
			$36,278.00
	Annual Amortization on ten year basis		$ 3,627.80
	Cents Per Revenue Mile		.1236

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R. 7647

Exhibit PI-29 (R. 7648-7649) *Statement of Profit and Loss—First Year's Operation.*

CAB DOCKET
NO. 1422

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PIEDMONT AVIATION, INC.

AIRMAIL PICK-UP OPERATION

SUMMARY

OPERATING EXPENSES

ACCOUNT NO.	DESCRIPTION	ESTIMATED COST PER ANNUM	CENTS PER REV. MILE
40	Flight Operations	$ 388,337.04	13.2265
45	Flight Equipment Maintenance-Direct	192,281.20	6.5490
50	Ground Operations	308,616.10	10.5113
55	Ground Equipment Maintenance-Direct	10,500.00	.3576
60	Equipment Maintenance-Indirect	46,928.00	1.5983
70	Traffic, Sales, Advertising, and Publicity	19,600.00	.6676
80	General and Administrative	83,385.33	2.8401
251	Depreciation - Flight Equipment	67,483.80	2.2985
271	Depreciation - Ground Equipment	11,441.47	.3897
		$1,128,572.94	38.4386

MILEAGE

Scheduled Miles	3,191,348
Expected Revenue Miles	2,936,040
Estimated precentage of Schedules	92%

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R. 7650

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Exhibit PI-31
Page 1 of 2 Pages

PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES
AIRMAIL PICK-UP OPERATION

FLIGHT OPERATIONS

ACCOUNT NO.	DESCRIPTION		ESTIMATED COST PER ANNUM	CENTS PER REV. MILE
401	Captains and Senior Pilots			
	29 Pilots at base pay of $1,600.00	$ 46,400.00		
	Mileage payments (including non-rev. miles) 2,983,910 at $.04 per mile	119,356.40	$165,756.40	5.6456
402	Other Flight Officers and Mechanics			
	24 Flight Mechanics at base pay of $840.00 per annum	$ 20,160.00		
	Mileage payments (including non-revenue miles) 2,983,910 at $.01 per mile	29,839.10	49,999.10	1.7029
403	Flight Crew Supplies and Expenses			
	Hotel Expenses-expenses of 8 employees while located away from base-Estimated at $45.00 per month each	$ 4,320.00		
	Meal Allowances-expenses of 8 employees while located away from base-Estimated at $2.50 daily-each---313 days	6,260.00		
	Transportation expenses-espenses of 8 employees while located away from base-Traveling to and from airport & hotel Estimated at $1.00 per day, each--313 days	2,504.00		
	Miscellaneous-employees expenses in connection with unscheduled landings, layovers, etc.	4,000.00	17,084.00	.5819
404	Aircraft engine fuels, oils and taxes			
	Based on Piedmont experience 2,983,910 miles at $.03269 per mile		97,544.02	3.3223
408	Rents of Flight Equipment			
	Estimated 2,936,040 revenue miles at $.0075 per mile		22,020.30	.7500

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R. 7651

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

AIRMAIL PICK-UP OPERATION

FLIGHT OPERATIONS

ACCOUNT NO.	DESCRIPTION		ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
409	Damage to Flight Equipment-All Risks Hull Insurance Coverage Estimated Premium-$285,000.00 at 8½%		$ 24,225.00	.8251
410	Damage to Flight Equipment-Reserve Provision Deductable in connection with all Risks Hull Coverage		2,850.00	.0971
412	Other Insurance--Flight Public Liability and Property Damage-19 aircraft at $88.75		1,686.25	.0574
413	Employees' Compensation and Other Insurance Workmans Compensation-$2.71 per $100.00 Salaries-$215,755.50	$5,846.97		
	Accident Insurance-$10,000.00 Coverage each Flight Employee Company pays ½ of premium, Company Shares of Premium--- 53 Pilots and Flight Mechanics at $25.00	1,325.00	7,171.97	.2442
			$388,337.04	13.2265

(R. 7652)

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

AIRMAIL PICK-UP OPERATION

FLIGHT EQUIPMENT MAINTENANCE - DIRECT

ACCOUNT NO.	DESCRIPTION	ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
451	Aircraft Repairs-Direct Labor-Maintenance, periodic checks, etc. 3 A&E mechanics @$3380.00 per annum-6 mechanic helpers @$2163.20 per annum	$ 23,119.20	.7874
452	Aircraft Repairs-Materials and outside repairs-Estimated at $1,250.00 per plane per year	23,750.00	.8089
453	Aircraft Repairs-Outside overhauls-Estimated six overhauls required per annum-Estimated cost per overhaul, $4,000.00	24,000.00	.8174
454	Aircraft Engine Repairs-Direct Labor-Maintenance and Estimated sixty overhauls per annum - 8 A&E mechanics @$3,380.00 per annum - 8 mechanic helpers @$2,163.20 per annum	44,345.60	1.5103
455	Aircraft Engine Repairs-Materials and outside repairs estimated at $300.00 per engine, per annum and $600.00 per engine overhaul	42,900.00	1.4612
457	Aircraft Instrument Repairs -- Outside repairs	3,600.00	.1226
458	Aircraft Propeller Repairs -- Outside repairs	7,500.00	.2555
460	Aircraft Radio Repairs--Direct Labor- 2 mechanics @$3,380.00 - 2 helpers @ $2,163.20	11,086.40	.3776
461	Aircraft Radio Repairs - Materials and outside repairs	1,000.00	.0341
462	Miscellaneous Flight Equipment Repairs-Direct Labor- 1 electrical mechanic	3,380.00	.1151
463	Miscellaneous Flight Equipment Repairs -- Materials and outside repairs	7,600.00	.2589
		$192,281.20	6.5490

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R. 7653

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Page 1 of 2 Pages

PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

AIRMAIL PICK-UP OPERATION

GROUND OPERATIONS

ACCOUNT NO.	DESCRIPTION		ESTIMATED COST PER ANNUM	CENTS PER REV. MILE
501	Vice President In Charge of Operations		$ 7,800.00	.2657
502	Operations Assistant Manager - 1 required		3,000.00	.1022
503	Dispatchers - 3 required @ $300.00 per month each		10,800.00	.3678
504	Communication Operators - 6 required @ $175.00 per month each		12,600.00	.4292
505	Service Employees			
	199 Messengers required - Estimated @ $90.00 per month each	$214,920.00		
	6 Service attendants - Estimated @ $125.00 per month each	9,000.00	223,920.00	7.6266
506	Other Ground Operations Employees			
	1 Secretary @ $150.00 per month	$ 1,800.00		
	1 Stenographer @ $125.00 per month	1,500.00		
	1 Supervisor of Messengers @ $250.00 per month	3,000.00		
	1 Telephone Operator @ $115.00 per month	1,380.00	7,680.00	.2616
507	Travel and Incidental Expenses			
	Supervisor of Messengers - Estimated at $325.00 per month	$ 3,900.00		
	Operations Manager - Estimated at $125.00 per month	1,500.00	5,400.00	.1839
508	Office Supplies and Expense - Estimated		2,500.00	.0851
509	Telephone and Telegraph - Estimated		5,200.00	.1771
510	Rents of Fields, Buildings and Office			
	194 Pick-Up Sites - Estimated at $ 25.00 per annum	$ 4,850.00		
	Landing field rents and charges - 42 Reular scheduled landings estimated at $25.00 per landing per month	12,600.00		
	Hangar rentals - Storage of planes - 19 @ $35.00 per month	7,980.00		
	Office space - 4 @ $50.00 per month	2,400.00	27,830.00	.9479

R. 7654

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Page 2 of 2 Pages

PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

AIRMAIL PICK-UP OPERATION

GROUND OPERATIONS

ACCOUNT NO.	DESCRIPTION		ESTIMATED COST PER ANNUM	CENTS PER REV. MILE
511	Servicing Supplies and Expense			
	Estimated at $50.00 per month		$ 600.00	.0204
512	Buildings, Contents and Liability Insurance			
	Radio transmitting and receiving stations - Value $3,750.00 - @ $1.25 per $100.00	$ 46.88		
	Messenger Radios - Premium $1.20 per annum	232.80		
	Public Liability in connection with messengers' autos @ $1.50 each	291.00	570.68	.0194
513	Employees Compensation and Other Insurance			
	Workmans Compensation			
	Service employees - $9,000.00 - Salaries @ $.98 per $100.00	$ 88.20		
	Other employees - $41,880.00 - Salaries @ $.065 per $100.00	27.22	115.42	.0040
515	Other Ground Operations Expense			
	Miscellaneous - Estimated		600.00	.0204
			$308,616.10	10.5113

R. 7655

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

AIRMAIL PICK-UP OPERATION

GROUND EQUIPMENT MAINTENANCE - DIRECT

ACCOUNT NO.	DESCRIPTION	ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
552	Station Communication Equipment - Materials and Outside Repairs	$ 1,200.00	.0408
553	Hangar and Shop Equipment Repairs - Direct labor - 1 mechanic	2,400.00	.0817
554	Hangar and Shop Equipment Repairs - Materials and outside repairs	1,000.00	.0342
555	Motor Vehicles and Equipment - Materials and outside repairs	2,400.00	.0817
556	Other Ground Equipment Repairs - Materials and outside repairs	3,500.00	.1192
		$10,500.00	.3576

(R. 7656)

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

AIRMAIL PICK-UP OPERATION

EQUIPMENT MAINTENANCE - INDIRECT

ACCOUNT NO.	DESCRIPTION		ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
601	Vice President In Charge of Maintenance		$ 6,900.00	.2350
602	Maintenance Foreman - 2 required @ $300.00 per month each		7,200.00	.2452
603	Stock and Store Employees			
	2 Storeroom Clerks @ $150.00 per month each	$3,600.00		
	1 Inspector @ $325.00 per month	3,900.00	7,500.00	.2555
604	Other Equipment Maintenance Employees			
	1 Secretary @ $150.00 per month	$1,800.00		
	1 Clerk @ $135.00 per month	1,620.00		
	1 Janitor @ $100.00 per month	1,200.00	4,620.00	.1574
605	Unallocated Shop Labor			
	Sick pay, vacation and unallocated time of mechanics estimated at 4½% of $84,331.20 - Direct Labor payroll		3,794.90	.1293
607	Travel and Incidental Expenses - Estimated at $75.00 per month		900.00	.0306
608	Office Supplies and Expenses - Estimated at $150.00 per month		1,800.00	.0612
609	Telephone and Telegraph - Estimate		800.00	.0273
610	Rent Expense - Shop and Hangar - Estimated at $500.00 per month		6,000.00	.2044
611	Heat, Lights and Power - Estimated at $200.00 per month		2,400.00	.0817
615	Shop Supplies and Expenses - Estimated at $250.00 per month		3,000.00	.1022
616	Buildings, Contents and Liability Insurance - Equipment and Inventory		350.00	.0119
617	Employees Compensation and Other Insurance			
	Direct Maintenance Payroll - - $84,331.20 @ $.98	$826.44		
	Indirect Maintenance Payroll - $22,800.00 @ $.98	234.44		
	Clerical Payroll - $ 3,420.00 @ $.065	2.22	1,063.10	.03627
619	Other Equipment Maintenance Expenses - Estimated at $50.00 per month		600.00	.0204
			$46,928.00	1.5983

(R. 7657)

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Exhibit P1-36
Page 1 of 1 Page

PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES
AIRMAIL PICK-UP OPERATION

TRAFFIC, SALES, ADVERTISING, AND PUBLICITY

ACCOUNT NO.	DESCRIPTION	ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
701	Vice President in charge of Traffic, Sales, Advertising & Publicity	$ 6,000.00	.2044
703	Other Traffic and Sales Employees, 1 Secretary	1,800.00	.0613
704	Travel and Incidental Expenses-Estimated at $400.00 per month	4,800.00	.1635
705	Office Supplies and Expenses-Estimated annual expense	300.00	.0102
706	Telephone and Telegraph-Estimated annual expense	400.00	.0136
708	Tariffs and Schedules-Estimated annual expense	300.00	.0102
710	Advertising Expenses-Estimated annual expense	2,500.00	.0852
712	Airmail Developmental Program	3,500.00	.1192
		$19,600.00	.6676

(R. 7658)

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES
AIRMAIL PICK-UP OPERATION
GENERAL AND ADMINISTRATIVE

ACCOUNT NO.	DESCRIPTION			ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
801	General Officers and Executives			$27,600.00	.9400
802	General Office Employees				
	3 Accountants (Junior Grade)	@ $200.00 per month	$7,200.00		
	2 Executive Secretaries	@ $150.00 per month	3,600.00		
	4 Stenographers	@ $125.00 per month	6,000.00		
	2 Clerks	@ $125.00 per month	3,000.00		
	2 Telephone Operators	@ $115.00 per month	2,760.00		
	1 Janitor	@ $100.00 per month	1,200.00	23,760.00	.8093
803	Travel and Incidental Expenses				
	Travel expenses of Officers - Estimated at $200.00 per month			2,400.00	.0817
804	Office Supplies and Expenses - Estimated at $200.00 per month			2,400.00	.0817
805	Telephone and Telegraph - Estimated			1,600.00	.0545
808	Legal and Professional Expenses			1,600.00	.0545
810	Memberships and Publications			1,200.00	.0409
815	General Taxes				
	State Franchise taxes and miscellaneous licenses		$ 1,000.00		
	Social Security and employment taxes - Estimated at 2% of payroll - Payroll $651,266.70		13,025.33		
	Property and other miscellaneous taxes - Estimated		7,500.00	21,525.33	.7332
816	Buildings, Contents and Liability Insurance Equipment and Supplies - Estimated			100.00	.0034
818	Other Expenses - Estimated at $100.00 per month			1,200.00	.0409
				$83,385.33	2.8401

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R. 7659

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

AIRMAIL PICK-UP OPERATION

DEPRECIATION - FLIGHT EQUIPMENT

ACCOUNT NO.	EQUIPMENT REQUIRED	COST	SALVAGE VALUE	DEPRECIATION COST	LIFE	ANNUAL DEPRECIATION	CENTS PER REV. MILE
1501	AIRCRAFT - 19 required @ $11,000.00	$209,000.00	$20,900.00	$188,100.00	5 yrs.	$37,620.00	1.2813
1502	AIRCRAFT ENGINES 24 required @ $ 4,000.00	96,000.00	9,600.00	86,400.00	5 yrs.	17,280.00	.5886
1503	AIRCRAFT PROPELLERS 24 required @ $ 1,200.00	28,800.00	2,880.00	25,920.00	5 yrs.	5,184.00	.1766
1504	AIRCRAFT RADIOS 22 required @ $ 1,000.00	22,000.00	2,200.00	19,800.00	5 yrs.	3,960.00	.1348
1505	MISCELLANEOUS FLYING EQUIPMENT 426 containers @ $ 35.00	14,910.00	1,491.00	13,419.00	5 yrs.	2,683.80	.0914
1508	SPARE PARTS - 4 sets of instruments @ $ 1,050.00	4,200.00	420.00	3,780.00	5 yrs.	756.00	.0258
		$374,910.00	$37,491.00	$337,419.00		$67,483.80	2.2985

R. 7660

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PIEDMONT AVIATION, INC.

AIRMAIL PICK-UP OPERATION

DEPRECIATION -- GROUND EQUIPMENT

ACCOUNT NO.	EQUIPMENT REQUIRED	COST		SALVAGE VALUE	DEPRE. COST	LIFE	ANNUAL DEPRECIATION	CENTS PER REV. MILE
1551	STATION COMMUNICATION EQUIPMENT							
	3 Transmitting and receiving stations installed at $1250.00	$ 3750.00						
	194 Messenger Stations Installed	15520.00	$19,270.00	$1,927.00	$17,343.00	5yrs.	$ 3,468.60	.1181
1552	HANGER & SHOP EQUIPMENT							
	Operating Base	$12756.25						
	Sub Bases	2420.00	15,176.25	1,517.62	13,658.63	5yrs.	2,731.73	.0931
1554	FURNITURE & FIXTURES		5,923.80	592.38	5,331.42	10yrs.	533.14	.0182
1555	MOTOR VEHICLES & EQUIPMENT							
	1 Panel Truck	$ 1800.00						
	2 Automobiles	2800.00	4,600.00	460.00	4,140.00	5yrs.	828.00	.0282
1558	MISCELLANEOUS GROUND EQUIPMENT							
	194 Ground Stations & Storage Boxes		19,400.00		19,400.00	5yrs.	3,880.00	.1321
			$64,370.05	$4,497.00	$59,873.05		$11,441.47	.3897

R. 7661

Exhibit PI-40 (R. 7662) shows non-operating income and deductions from income.

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Exhibit PI-41
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R. 7663

PIEDMONT AVIATION, INC.

AIRMAIL PICK-UP OPERATION

INVESTMENT REQUIRED

CASH	$151,500.00
INVENTORY	21,111.95
MOTOR FUEL	1,500.00
LUBRICATING OIL	330.00
FLIGHT EQUIPMENT	374,910.00
OTHER EQUIPMENT	64,370.05
DEVELOPMENT EXPENSE INCURRED	36,278.00
TOTAL INVESTED CAPITAL	$650,000.00
8% RETURN ON INVESTED CAPITAL	$ 52,000.00
REVENUE REQUIRED TO PRODUCE 8% AFTER 40% FEDERAL AND 6% STATE TAXES	$ 92,857.14
CENTS PER REVENUE MILE	3.1627

PIEDMONT AVIATION, INC.

AIRMAIL PICK-UP OPERATION

PERSONNEL REQUIRED

NO. OF EMPLOYEES		MONTHLY SALARY RATE	MONTHLY SALARIES	ANNUAL SALARIES
1	Vice President In charge of Operations	$650.00	$ 650.00	$ 7,800.00
1	Operations Assistant Manager	250.00	250.00	3,000.00
29	Pilots	476.31	13,813.03	165,756.40
24	Flight Mechanics	173.61	4,166.59	49,999.10
3	Dispatchers	300.00	900.00	10,800.00
6	Communication Operators	175.00	1,050.00	12,600.00
199	Messengers	90.00	17,910.00	214,920.00
6	Service Attendants	125.00	750.00	9,000.00
1	Secretary to Operations	150.00	150.00	1,800.00
1	Stenographer - Operations	125.00	125.00	1,500.00
1	Supervisor of Messengers	250.00	250.00	3,000.00
3	Telephone Operators	115.00	345.00	4,140.00
1	Vice President In charge of Maintenance	575.00	575.00	6,900.00
2	Maintenance Foremen	300.00	600.00	7,200.00
11	A&E Mechanics	281.67	3,098.33	37,180.00
16	Mechanic Helpers	180.27	2,884.27	34,611.20
2	Radio Mechanics	281.67	563.33	6,760.00
1	Electrical Mechanic	281.67	281.67	3,380.00
1	Maintenance Repairman	200.00	200.00	2,400.00
1	Secretary - Maintenance	150.00	150.00	1,800.00
2	Storeroom Clerks	150.00	300.00	3,600.00
1	Inspector - Maintenance	325.00	325.00	3,900.00
1	Clerk - Maintenance	135.00	135.00	1,620.00
1	Janitor - Maintenance	100.00	100.00	1,200.00
1	Vice President In charge of Traffic, Sales, Advertising, and Publicity	500.00	500.00	6,000.00
1	Secretary - Traffic	150.00	150.00	1,800.00
2	Secretaries - Executive Offices	150.00	300.00	3,600.00
3	Accountants (Junior Grade) - General Office	200.00	600.00	7,200.00
4	Stenographers - General Offices	125.00	500.00	6,000.00
2	Clerks-General Offices	125.00	250.00	3,000.00
1	Janitor-General Offices	100.00	100.00	1,200.00
	Executive Officers (2)	12,300.00	2,300.00	27,600.00
			$54,272.22	$651,266.70

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R. 7665

PIEDMONT AVIATION, INC.

AIRMAIL PICK-UP OPERATION

MAIL PAY REQUIRED TO COVER
COST OF OPERATIONS AND 8% RETURN ON INVESTED CAPITAL

TOTAL OPERATING EXPENSES	38.44 per rev. mile
DEDUCTIONS FROM INCOME	.39 per rev. mile
8% RETURN ON INVESTMENT	3.16 per rev. mile
	41.99
REVENUE FROM EXPRESS	1.00 per rev. mile
MAIL PAY REQUIRED	40.99

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PIEDMONT AVIATION, INC.

SCHEDULED AIRMAIL PICK-UP MILES AND HOURS

ROUTES		DAILY MILES	DAILY HOURS	YEARLY MILES	YEARLY HOURS
1	Charlotte-Norfolk---Via Greensboro & Richmond	808	7:38	252904	2389:14
2	Charlotte-Norfolk---Via Raleigh	680	6:24	212840	2003:12
3	Charlotte-Atlanta	1112	10:24	348056	3255:12
4	Raleigh-Durham--Asheville	472	4:28	147736	1398:04
5	Raleigh-Durham--Norfolk	514	4:46	160882	1491:58
6	Charlotte-Wilmington	384	3:40	120192	1147:40
7	Raleigh-Durham--Wilmington	510	4:44	159630	1481:32
8	Charlotte-Knoxville	924	8:40	289212	2712:40
9	Winston-Salem--Washington----Via Roanoke	804	7:28	251652	2337:04
10	Winston-Salem--Washington----Via Lynchburg	828	7:44	259164	2420:32
11	Lynchburg-Knoxville	628	6:00	196564	1878:00
12	Charlotte-Charleston, S. C.	524	4:58	164012	1554:34
13	Winston-Salem--Charleston, W. Va.	920	8:44	287960	2733:32
14	Raleigh-Columbia	576	5:28	180288	1711:04
15	Atlanta-Columbia	512	4:54	160256	1533:42
		10,196	96:00	3,191,348	30048:00
	ANNUAL EXPECTANCY -- 92%				
		9,380	88:19	2,936,040	27644:10

ESTIMATED NON-REVENUE MILES----------47,870

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R. 7667

PIEDMONT AVIATION, INC.

AIRMAIL PICK-UP OPERATION

COMPUTATION OF FLIGHT MILEAGE

ROUTES	ROUTE MILES		DAILY SCHEDULED MILES		OPERATING DAYS		ANNUAL SCHEDULED MILES
1	404 x 2	=	808	x	313	=	252,904
2	340 x 2	=	680	x	313	=	212,840
3	278 x 4	=	1,112	x	313	=	348,056
4	236 x 2	=	472	x	313	=	147,736
5	257 x 2	=	514	x	313	=	160,882
6	192 x 2	=	384	x	313	=	120,192
7	255 x 2	=	510	x	313	=	159,630
8	231 x 4	=	924	x	313	=	289,212
9	402 x 2	=	804	x	313	=	251,652
10	414 x 2	=	828	x	313	=	259,164
11	314 x 2	=	628	x	313	=	196,564
12	262 x 2	=	524	x	313	=	164,012
13	230 x 4	=	920	x	313	=	287,960
14	288 x 2	=	576	x	313	=	180,288
15	256 x 2	=	512	x	313	=	160,256
	4,359		10,196				3,191,348

COMPUTATION OF FLIGHT HOURS

ROUTES	TRIP HOURS		DAILY SCHEDULED HOURS		OPERATING DAYS		ANNUAL SCHEDULED HOURS
1	3:49 x 2	=	7:38	x	313	=	2389:14
2	3:12 x 2	=	6:24	x	313	=	2003:12
3	2:36 x 4	=	10:24	x	313	=	3255:12
4	2:14 x 2	=	4:28	x	313	=	1398:04
5	2:23 x 2	=	4:46	x	313	=	1491:58
6	1:50 x 2	=	3:40	x	313	=	1147:40
7	2:22 x 2	=	4:44	x	313	=	1481:32
8	2:10 x 4	=	8:40	x	313	=	2712:40
9	3:44 x 2	=	7:28	x	313	=	2337:04
10	3:52 x 2	=	7:44	x	313	=	2420:32
11	3:00 x 2	=	6:00	x	313	=	1878:00
12	2:29 x 2	=	4:58	x	313	=	1554:34
13	2:11 x 4	=	8:44	x	313	=	2733:32
14	2:44 x 2	=	5:28	x	313	=	1711:04
15	2:27 x 2	=	4:54	x	313	=	1533:42
			96:00				30048:00

PIEDMONT AVIATION, INC.

R. 7669

ALPHABETICAL LIST BY STATES OF TOWNS AND CITIES INVOLVED IN PROPOSED PASSENGER ROUTES

State	City	Route
D. C.	1. Washington*	1
MARYLAND	1. Frederick	1
	2. Hagerstown	1
NORTH CAROLINA	1. Asheville*	3,4
	2. Charlotte*	3,5
	3. Concord	5
	4. Gastonia	3
	5. Hendersonville	3,4
	6. Lumberton	3
	7. Monroe	3
	8. Pinehurst	3
	9. Rockingham	3
	10. Salisbury	5
	11. Shelby	3
	12. Wadesboro	3
	13. Wilmington*	3
	14. Winston-Salem*	1,5
SOUTH CAROLINA	1. Anderson	4
	2. Camden	5
	3. Chester	5
	4. Columbia*	4,5
	5. Greenville*	4
	6. Greenwood	4
	7. Lancaster	5
	8. Rock Hill	5
TENNESSEE	1. Knoxville*	3
VIRGINIA	1. Clifton Forge	1
	2. Covington	1
	3. Farmville	2
	4. Harrisonburg	1
	5. Lexington	1
	6. Lynchburg*	2
	7. Martinsville	1
	8. Norfolk*	2
	9. Petersburg	2
	10. Richmond*	2
	11. Roanoke*	1,2
	12. Staunton	1
	13. Waynesboro	1
	14. Winchester	1
WEST VIRGINIA	1. Martinsburg	1

*PRESENTLY CERTIFICATED CARRIER STATIONS

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Exhibit PI-47
Page 1 of 4 Pages

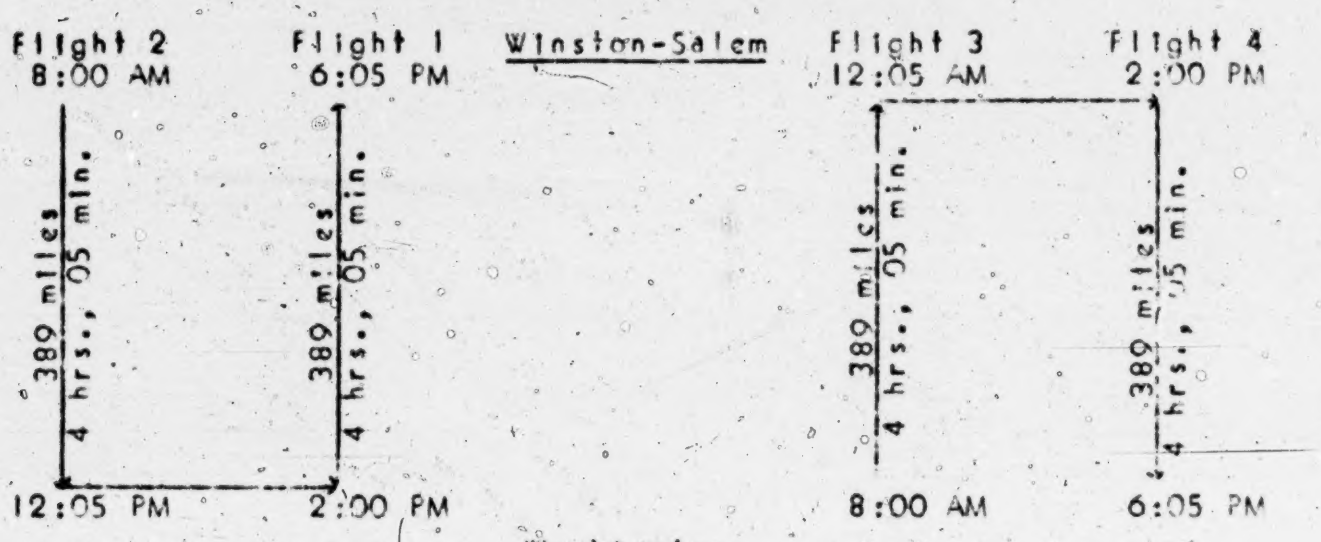
PIEDMONT AVIATION, INC. R. 7670

Proposed Schedules - M.P.E. Operation

Route 1 - 1556 miles

WINSTON-SALEM - WASHINGTON

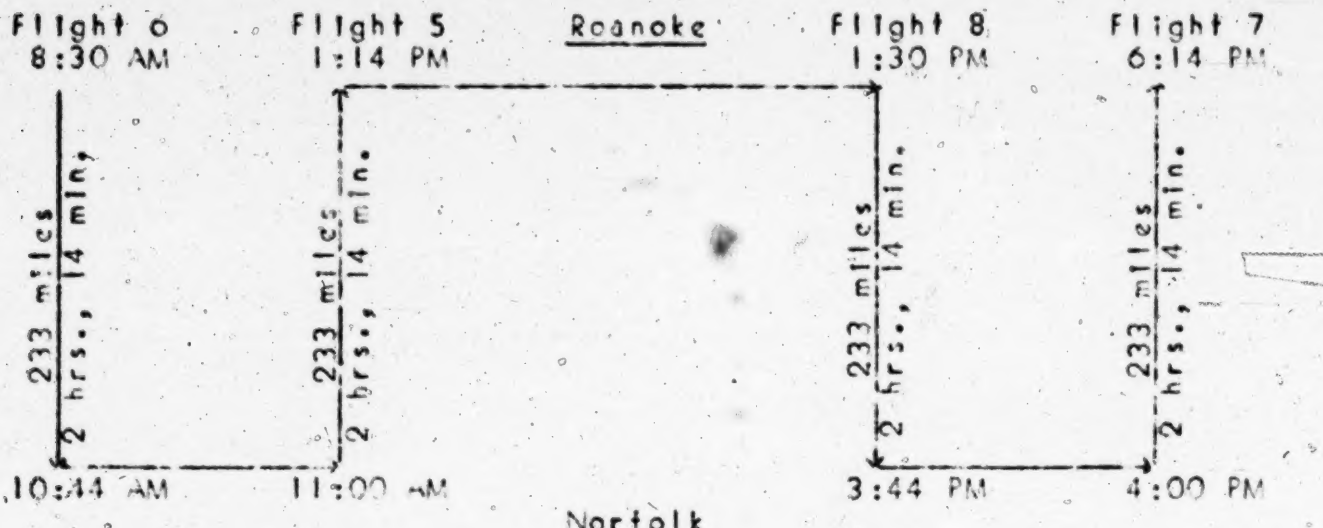
12 hours, 40 minutes flying daily



Route 2 - 932 miles

ROANOKE - NORFOLK

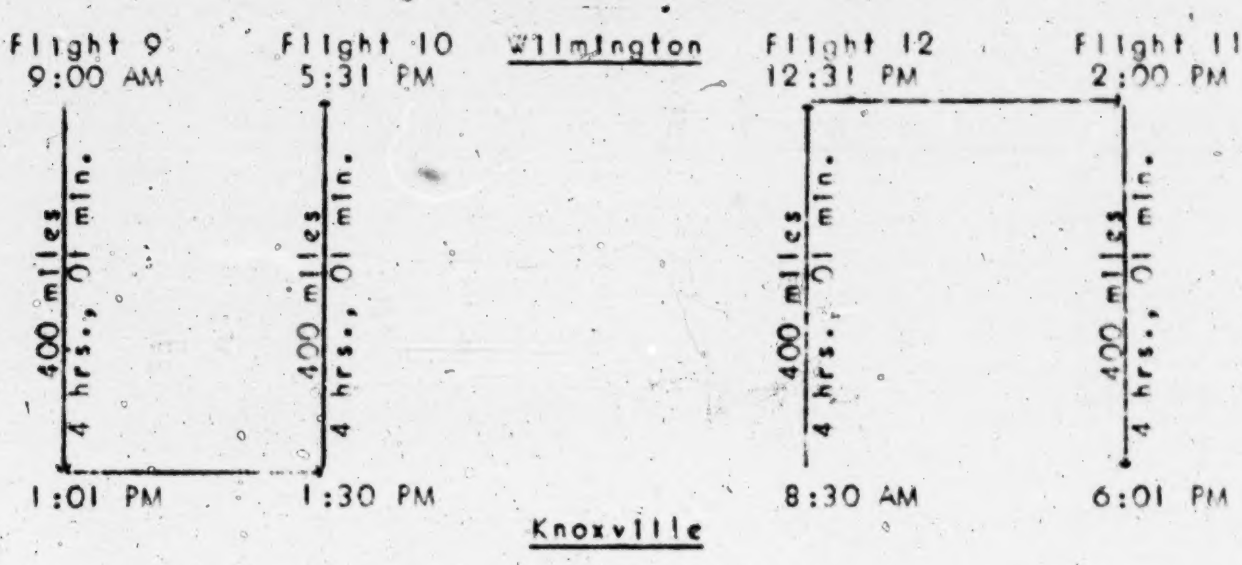
7 hours, 36 minutes flying daily



PIEDMONT AVIATION, INC.

Proposed Schedules - M.P.E. Operation

Route 3 - 1600 miles
WILMINGTON - KNOXVILLE
13 hours, 04 minutes flying daily



Route 4 - 360 miles
COLUMBIA - ASHEVILLE-HENDERSONVILLE
2 hrs., 56 min. flying daily

Route 5 - 404 miles
WINSTON-SALEM - COLUMBIA
3 hrs., 18 min. flying daily

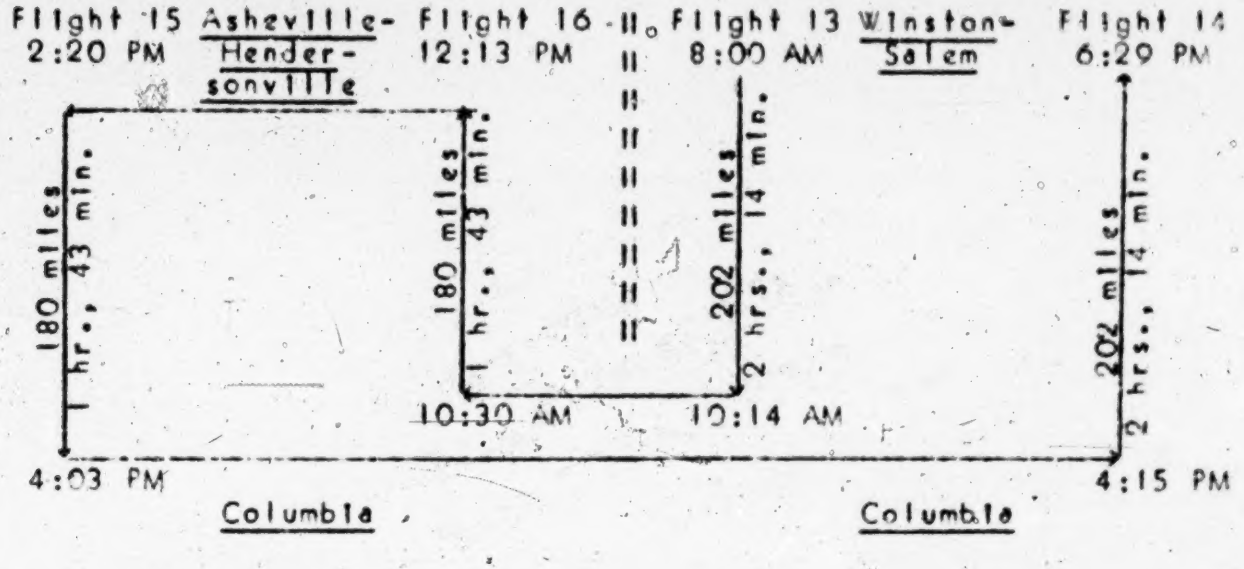


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Exhibit PI-47
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PIEDMONT AVIATION, INC.

WINSTON-SALEM - WASHINGTON
Proposed Schedule - M.P.E. Operation

Cum. Miles	Flight 2 (Read Down)	Flight 4 (Read Down)	ROUTE 1	Flight 3 (Read Up)	Flight 1 (Read Up)
0	8:00 AM	2:00 PM	Lv..Winston-Salem.Ar.	12:05 PM	6:05
43	8:26	2:26	Lv..Martinsville..Lv.	11:44	5:44
86	8:52	2:52	Lv..Roanoke.....Lv.	11:18	5:18
119	9:13	3:13	Lv..Covington-Clifton Forge.....Lv.	10:57	4:57
143	9:30	3:30	Lv..Lexington.....Lv.	10:40	4:40
180	9:53	3:53	Lv..Waynesboro....Lv.	10:17	4:17
190	10:03	4:03	Lv..Staunton.....Lv.	10:07	4:07
210	10:18	4:18	Lv..Harrisonburg..Lv.	9:52	3:52
272	10:53	4:53	Lv..Winchester....Lv.	9:17	3:17
294	11:09	5:09	Lv..Martinsburg...Lv.	9:01	3:01
319	11:26	5:26	Lv..Hagerstown....Lv.	8:44	2:44
344	11:43	5:43	Lv..Frederick.....Lv.	8:27	2:27
389	12:05 PM	6:05	Ar..Washington....Lv.	8:00 AM	2:00 PM

ROANOKE - NORFOLK
Proposed Schedule - M.P.E. Operation

Cum. Miles	Flight 6 (Read Down)	Flight 8 (Read Down)	ROUTE 2	Flight 5 (Read Up)	Flight 7 (Read Up)
0	8:30 AM	1:30 PM	Lv..Roanoke.....Ar.	1:14	6:14
42	8:56	1:56	Lv..Lynchburg.....Lv.	12:53	5:53
85	9:22	2:22	Lv..Farmville.....Lv.	12:27 PM	5:27
141	9:54	2:54	Lv..Petersburg....Lv.	11:55	4:55
159	10:08	3:08	Lv..Richmond.....Lv.	11:41	4:41
233	10:44	3:44	Ar..Norfolk.....Lv.	11:00 AM	4:00 PM

WILMINGTON - KNOXVILLE
Proposed Schedule - M.P.E. Operation

Cum. Miles	Flight 9 (Read Down)	Flight 11 (Read Down)		Flight 12 (Read Up)	Flight 10 (Read Up)
0	9:00 AM	2:00 PM	Lv..Wilmington....Ar.	12:31 PM	5:31
72	9:40	2:40	Lv..Lumberton.....Lv.	11:56	4:56
119	10:08	3:08	Lv..Pinehurst.....Lv.	11:28	4:28
151	10:29	3:29	Lv..Rockingham....Lv.	11:07	4:07
170	10:43	3:43	Lv..Wadesboro.....Lv.	10:53	3:53
198	11:02	4:02	Lv..Monroe.....Lv.	10:34	3:34
225	11:20	4:20	Lv..Charlotte.....Lv.	10:16	3:16
239	11:32	4:32	Lv..Gastonia.....Lv.	10:04	3:04
257	11:46	4:46	Lv..Shelby.....Lv.	9:50	2:50
310	12:17 PM	5:17	Lv..Asheville-Hendersonville..Lv.	9:19	2:19
400	1:01	6:01	Ar..Knoxville.....Lv.	8:30 AM	1:30 PM

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PIEDMONT AVIATION, INC.

COLUMBIA - ASHEVILLE-HENDERSONVILLE

Proposed M.P.E. Operation

Cum. Miles	Flight 16 (Read Down)	ROUTE 4	Flight 15 (Read Up)
00	10:30 AM	Lv. Columbia ..... Ar.	4:03
72	11:10	Lv. Greenwood ..... Lv.	3:28
107	11:32	Lv. Anderson ..... Lv.	3:06
139	11:53	Lv. Greenville ..... Lv.	2:45
180	12:13 PM	Ar. Asheville-Hendersonville Lv.	2:20 PM

WINSTON-SALEM - COLUMBIA

Proposed M.P.E. Operation

Cum. Miles	Flight 13 (Read Down)	ROUTE 5	Flight 14 (Read Up)
0	8:00 AM	Lv. ..... Winston-Salem ..... Ar.	6:29
37	8:23	Lv. ..... Salisbury ..... Lv.	6:11
54	8:36	Lv. ..... Concord ..... Lv.	5:58
80	8:54	Lv. ..... Charlotte ..... Lv.	5:40
102	9:10	Lv. ..... Rock Hill ..... Lv.	5:24
116	9:22	Lv. ..... Chester ..... Lv.	5:12
139	9:38	Lv. ..... Lancaster ..... Lv.	4:56
170	9:58	Lv. ..... Camden ..... Lv.	4:36
202	10:14	Ar. ..... Columbia ..... Lv.	4:15 PM

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SUPPLEMENTAL
EXHIBIT PI-47A
Page 1 of 3 Pages

PIEDMONT AVIATION, INC.

MILEAGE AND FARES ON PROPOSED M. P. E. ROUTES

ROUTE 1

	WINSTON-SALEM	MARTINSVILLE	ROANOKE	COVINGTON-CLIFTON FORGE	LEXINGTON	WAYNESBORO	STAUNTON	HARRISONBURG	WINCHESTER	MARTINSBURG	HAGERSTOWN	FREDERICK	WASHINGTON
WINSTON-SALEM		43	86	119	143	180	190	210	272	294	319	344	389
MARTINSVILLE	2.37		43	76	100	137	147	167	229	251	276	301	346
ROANOKE	4.73	2.37		33	57	94	104	124	186	208	233	258	303
COVINGTON-CLIFTON FORGE	6.55	4.18	1.82		24	61	71	91	153	175	200	225	270
LEXINGTON	7.87	5.50	3.14	1.32		37	47	67	129	151	176	201	246
WAYNESBORO	9.90	7.54	5.17	3.36	2.04		10	30	92	114	139	164	209
STAUNTON	10.45	8.09	5.72	3.91	2.59	.55		20	82	104	129	154	199
HARRISONBURG	11.55	9.19	6.82	5.01	3.69	1.65	1.10		62	84	109	134	179
WINCHESTER	14.96	12.60	10.23	8.42	7.10	5.06	4.51	3.41		22	47	72	117
MARTINSBURG	16.17	13.81	11.44	9.63	8.31	6.27	5.72	4.62	1.21		25	50	95
HAGERSTOWN	17.55	15.18	12.82	11.00	9.68	7.65	7.10	6.00	2.59	1.38		25	70
FREDERICK	18.92	16.56	14.19	12.38	11.06	9.02	8.47	7.37	3.96	2.75	1.38		45
WASHINGTON	21.40	19,03	16.67	14.85	13.53	11.50	10.95	9.85	6.44	5,23	3.85	2.48	

Upper Bracket-------Mileage between stations
Lower Bracket-------Fares

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R. 7674

CAB DOCKET
NO. 1422

SUPPLEMENTAL
EXHIBIT PI-47A
Page 2 of 3 Pages
R. 7675

PIEDMONT AVIATION, INC.

MILEAGE AND FARES ON PROPOSED M. P. E. ROUTES

ROUTE 2

	NORFOLK	RICHMOND	PETERSBURG	FARMVILLE	LYNCHBURG	ROANOKE
NORFOLK		74	92	148	191	233
RICHMOND	4.07		18	74	117	159
PETERSBURG	5.06	.99		56	99	141
FARMVILLE	8.14	4.07	3.08		43	85
LYNCHBURG	10.51	6.44	5.45	2.37		42
ROANOKE	12.82	8.75	7.76	4.68	2.31	

ROUTE 3

	WILMINGTON	LUMBERTON	PINEHURST	ROCKINGHAM	WADESBORO	MONROE	CHARLOTTE	GASTONIA	SHELBY	ASHEVILLE-HENDERSONVILLE	KNOXVILLE
WILMINGTON		72	119	151	170	198	225	239	257	310	400
LUMBERTON	3.96		47	79	98	126	153	167	185	238	328
PINEHURST	6.55	2.59		32	51	79	106	120	138	191	281
ROCKINGHAM	8.31	4.35	1.76		19	47	74	88	106	159	249
WADESBORO	9.35	5.39	2.81	1.05		28	55	69	87	140	230
MONROE	10.89	6.93	4.35	2.59	1.54		27	41	59	112	202
CHARLOTTE	12.38	8.42	5.83	4.07	3.03	1.49		14	32	85	175
GASTONIA	13.15	9.19	6.60	4.84	3.80	2.26	.77		18	71	161
SHELBY	14.14	10.18	7.59	5.83	4.79	3.25	1.76	.99		53	143
ASHEVILLE-HENDERSONVILLE	17.05	13.09	10.51	8.75	7.70	6.16	4.68	3.91	2.92		90
KNOXVILLE	22.00	18.04	15.46	13.70	12.65	11.11	9.63	8.86	7.87	4.95	

Upper Bracket——Lileage between stations
Lower Bracket——Fares

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SUPPLEMENTAL
EXHIBIT PI-47A
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R. 7676

PIEDMONT AVIATION, INC.

MILEAGE AND FARES ON PROPOSED A. P. E. ROUTES

ROUTE 4

	COLUMBIA	GREENWOOD	ANDERSON	GREENVILLE	ASHEVILLE-HENDERSONVILLE
COLUMBIA		72	107	139	180
GREENWOOD	3.96		35	67	108
ANDERSON	5.89	1.93		32	73
GREENVILLE	7.65	3.69	1.76		41
ASHEVILLE-HENDERSONVILLE	9.90	5.94	4.02	2.26	

ROUTE 5

	WINSTON-SALEM	SALISBURY	CONCORD	CHARLOTTE	ROCK HILL	CHESTER	LANCASTER	CAMDEN	COLUMBIA
WINSTON-SALEM		37	54	80	102	116	139	170	202
SALISBURY	2.04		17	43	65	79	102	133	165
CONCORD	2.97	.94		26	48	62	85	116	148
CHARLOTTE	4.40	2.37	1.43		22	36	59	90	122
ROCK HILL	5.61	3.58	2.64	1.21		14	37	68	100
CHESTER	6.38	4.35	3.41	1.98	.77		23	54	86
LANCASTER	7.65	5.61	4.68	3.25	2.04	1.27		31	63
CAMDEN	9.35	7.32	6.38	4.95	3.74	2.97	1.71		32
COLUMBIA	11.11	9.08	8.14	6.71	5.50	4.73	3.47	1.76	

Upper Bracket-----Mileage between stations
Lower Bracket-----Fares

Exhibit PI-48 (R. 7677-7681) consists of 5 maps showing each of 5 routes proposed for M. P. E. Operation proposed by Piedmont's amended application to the Board.

Exhibit PI-49 (R. 7682) is a map showing routes proposed by Piedmont's amended application for passenger, mail, and express routes in relation to certificated AM routes.

EXHIBIT PI-50

[R. 7684]

STATEMENT OF PURPOSE

The question as to the practicality of local or feeder air service has been a principal subject of debate among people connected with the air transport industry for a number of years, both pro and con. It is the opinion of the applicant that, to date, there has been no concrete evidence supporting either opinion. It is the purpose of the applicant to prove that local air service, in the strict sense of the word, *is* practical.

A short haul scheduled air service cannot correctly be referred to as a "feeder line" since trunk line carriers would "feed" to the short haul line and vice versa. Short haul operation will be referred to herein as "Local Air Service."

The principal theme of Piedmont's case is economy of operation. Local air transportation is new and there is very little experience on which one can establish facts. In such cases it is sound business practice to begin operation with the least possible cost to the public, as well as the operator, until such time as facts are available to prove that the project is, or is not, practical.

With this thought in mind, Piedmont proposes to eliminate the luxuries generally afforded air travelers, such as food service and steward or stewardess.

All financial figures and schedules in the following exhibits are based on the performance of the Noorduyn Norseman V, having a passenger capacity of six and crew of two. While this is not the ideal aircraft for the purpose, it fulfills more of the requirements than any other known make. It will operate in and out of small fields safely, and the operations cost is lower than that of other aircraft designed for local operation. While it is a single engine aircraft, all schedules are during daylight hours.

Arrangements have been made with aircraft service operators at most of the proposed stations to handle reservation and act as representatives, thus eliminating the need of numerous station personnel. Reservations are to be handled by inter-company mail, telephone and radio.

As can be seen by the exhibits in Section Five-C, the combination of the airmail pick-up system with the mail, passenger and express operation would effect a substantial savings in mail pay required.

Exhibit PI-51 (R. 7685-7686) is entitled *Highway Traffic Flow Chart of the United States*, and is accompanied with an explanatory statement.

Exhibit PI-52, page 1 (R. 7687) is a chart entitled *Rail Traffic Between Points in South Atlantic Area*, being bordered by Washington, Roanoke and Knoxville on the north and west, and by Atlanta, Columbia, Wilmington and Norfolk on the south and east.

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Exhibit PI-52
Page 2 of 4 Pages
R. 7688

PIEDMONT AVIATION, INC.

PASSENGER TRAFFIC BY RAIL - 1933 -
BETWEEN PAIRS OF FOCAL POINTS IN SOUTHEAST
WITH NEW YORK AND CHICAGO SHOWN FOR COMPARISON

Between Asheville and:	
Knoxville	11,526
Washington	6,538
Greensboro-High Point	4,973
Charlotte	2,913
Durham-Raleigh	2,483
Winston-Salem	1,759
Columbia	1,053
Atlanta	942
Richmond	786
Norfolk (area)	691
Charleston, S. C.	378
Roanoke	66
Wilmington	57
Charleston, W. Va.	15
New York	3,819
Chicago	7,506

Between Charlotte and:	
Greensboro-High Point	13,153
Atlanta	9,282
Washington	6,410
Columbia	5,987
Winston-Salem	3,239
Richmond	2,721
Asheville	2,913
Durham-Raleigh	2,613
Wilmington	2,604
Norfolk (area)	1,552
Charleston, S. C.	339
Knoxville	268
Roanoke	61
Charleston, W. Va.	26
New York	5,912
Chicago	781

Between Greensboro-High Point and:	
Durham-Raleigh	18,599
Winston-Salem	17,558
Charlotte	13,153
Washington	8,400
Asheville	4,973
Atlanta	3,519
Richmond	3,328
Norfolk (area)	2,298
Charleston, S. C.	1,733
Columbia	477
Knoxville	332
Roanoke	204
Wilmington	145
Charleston, W. Va.	26
New York	7,007
Chicago	712

Between Winston-Salem and:	
Greensboro-High Point	17,558
Charlotte	13,153
Durham-Raleigh	6,448
Washington	3,893
Asheville	1,759
Roanoke	1,698
Richmond	1,071
Norfolk (area)	869
Atlanta	773
Columbia	431
Knoxville	126
Wilmington	58
Charleston, S. C.	27
Charleston, W. Va.	9
New York	2,702
Chicago	1,490

Source: Coordinator's Report

PIEDMONT AVIATION, INC. R. 7689

PASSENGER TRAFFIC BY RAIL - 1933 -
BETWEEN PAIRS OF FOCAL POINTS IN SOUTHEAST
WITH NEW YORK AND CHICAGO SHOWN FOR COMPARISON

Between Norfolk (area) and:	
Richmond	61,769
Raleigh-Durham	29,260
Roanoke	7,666
Greensboro-High Point	2,298
Washington	2,273
Atlanta	2,193
Wilmington	1,816
Charleston, W. Va.	1,657
Charlotte	1,552
Charleston, S. C.	944
Winston-Salem	869
Asheville	691
Columbia	563
Knoxville	261
New York	21,628
Chicago	3,739

Between Richmond and:	
Norfolk (area)	61,769
Washington	41,246
Raleigh-Durham	9,671
Roanoke	7,789
Greensboro-High Point	3,328
Charlotte	2,721
Atlanta	2,608
Charleston, W. Va.	1,428
Charleston, S. C.	1,111
Winston-Salem	1,071
Wilmington	1,056
Columbia	870
Asheville	786
Knoxville	352
New York	34,256
Chicago	5,225

Between Roanoke and:	
Richmond	7,789
Norfolk	7,666
Washington	5,124
Winston-Salem	1,698
Knoxville	674
Raleigh-Durham	493
Atlanta	270
Columbia	206
Greensboro-High Point	204
Charleston, W. Va.	170
Asheville	66
Charlotte	61
Wilmington	12
Charleston, S. C.	9
New York	6,551
Chicago	1,506

Between Washington and:	
Richmond	41,246
Atlanta	11,749
Raleigh-Durham	8,564
Greensboro-High Point	8,400
Asheville	6,538
Charlotte	6,410
Charleston, W. Va.	6,314
Roanoke	5,124
Winston-Salem	3,893
Knoxville	3,582
Charleston, S. C.	3,229
Columbia	3,110
Norfolk (area)	2,273
Wilmington	2,023

Source: Coordinator's Report

CAB DOCKET
NO. 1422

Exhibit P1-52
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R. 7690

FIEDMONT AVIATION, INC.

PASSENGER TRAFFIC BY RAIL - 1933 -
BETWEEN PAIRS OF FOCAL POINTS IN SOUTHEAST
WITH NEW YORK AND CHICAGO SHOWN FOR COMPARISON

Between Raleigh-Durham and:		Between Wilmington and:	
Norfolk (area)	29,260	Charlotte	2,604
Greensboro-High Point	18,599	Washington	2,023
Richmond	9,671	Norfolk (area)	1,816
Washington	8,524	Richmond	1,056
Winston-Salem	6,448	Atlanta	628
Atlanta	3,877	Charleston, S. C.	431
Charlotte	2,613	Columbia	386
Asheville	2,483	Raleigh-Durham	385
Columbia	1,384	Greensboro-High Point	145
Knoxville	555	Winston-Salem	58
Roanoke	493	Asheville	57
Wilmington	385	Knoxville	13
Charleston, S. C.	153	Roanoke	12
Charleston, W. Va.	55	Charleston, W. Va.	3
New York	8,053	New York	2,161
Chicago	1,055	Chicago	429

Between Charleston, S.C. and:		Between Columbia and:	
Columbia	10,811	Charleston, S. C.	10,811
Atlanta	3,280	Charlotte	5,987
Washington	3,229	Washington	3,110
Greensboro-High Point	1,733	Atlanta	3,075
Richmond	1,111	Raleigh-Durham	1,384
Norfolk (area)	944	Asheville	1,053
Wilmington	431	Richmond	870
Asheville	378	Norfolk	563
Charlotte	337	Greensboro-High Point	477
Raleigh-Durham	153	Wilmington	386
Knoxville	74	Roanoke	206
Winston-Salem	27	Winston-Salem	431
Roanoke	9	Knoxville	116
Charleston, W. Va.	2	Charleston, W. Va.	5
New York	5,859	New York	2,706
Chicago	693	Chicago	619

Source: Coordinator's Report

Exhibit PI-53 (R. 7691-7692) is a chart entitled *Daily Bus Schedules Proposed M. P. E. Operation.*

Exhibit PI-54 (R. 7693) is a chart entitled *Rank of National Parks,* which names 7 national parks in the rank of their popularity and the average number of visitors between 1937-1941 and the percent total visitors to all parks.

R. 7694

PIEDMONT AVIATION, INC.

M.P.E. OPERATION

ESTIMATE OF PASSENGERS(1) AND MAIL(2) TO BE TRANSPORTED

Route 1: 389 Miles - Two Flights Each Way Daily

	POPULATION 1940	EST.NO.PASS. TO BE ORIGINATED MONTHLY	EST.NO.PIECES MAIL TO BE DISPATCHED MONTHLY
Winston-Salem, N.C.	79,815	212	16,400
Martinsville, Va.	10,080	40	5,175
Roanoke, Va.	69,287	277	16,400
Covington, Va.	6,300	25	6,300
Clifton Forge, Va.	6,461	26	3,280
Lexington, Va.	3,914	23	3,920
Waynesboro, Va.	7,373	29	4,370
Staunton, Va.	13,337	55	6,375
Harrisonburg, Va.	8,768	36	5,540
Winchester, Va.	12,095	48	5,540
Martinsburg, W.Va.	15,063	60	6,375
Hagerstown, Md.	32,491	130	9,700
Frederick, Md.	15,802	63	6,375
Washington, D.C.	663,091	330	105,400
			20,983(3)
TOTAL		1,354	222,133

Route 2: 233 Miles - Two Flights Each Way Daily

Roanoke, Va.	69,287	185	16,400
Lynchburg, Va.	44,541	178	13,720
Farmville, Va.	3,475	21	3,920
Petersburg, Va.	30,631	122	10,500
Richmond, Va.	193,042	480	36,280
Norfolk, Va.	144,332	300	23,910
			4,807(3)
TOTAL		1,286	109,537

(1) The passenger estimate is based upon population (4 passengers per month per 1000) modified to take into consideration (a) unusual conditions such as college population, resort characteristics, (b) predominance of existing traffic movement as shown by rail and highway movement. Figures estimated for intermediate points take into consideration the fact that traffic can flow in two directions; those for terminal points comprise one-way movement.

(2) Based on relationship between postal receipts and pieces dispatched according to 1942 experience of All-American Av.

(3) One-third of figure for intermediate points added to cover pieces dispatched to those points. This makes the estimate consistent with those made for pick-up routes. See Exhibit P1-23.

PIEDMONT AVIATION, INC. R. 7695

M.P.E. OPERATION

ESTIMATE OF PASSENGERS(1) AND MAIL(2) TO BE TRANSPORTED

Route 3: 400 Miles - Two Flights Each Way Daily

	POPULATION 1940	EST.NO.PASS. TO BE ORIGINATED MONTHLY	EST.NO.PIECES MAIL TO BE DISPATCHED MONTHLY
Knoxville, Tenn.	111,580	300	16,690
Asheville, N.C.	51,310	217	11,970
Hendersonville, N.C.	5,381		4,370
Shelby, N.C.	14,037	56	5,540
Gastonia, N.C.	21,313	85	6,980
Charlotte, N.C.	100,899	403	23,910
Monroe, N.C.	6,475	26	4,370
Wadesboro, N.C.	3,587	14	3,000
Rockingham, N.C.	3,657	16	3,280
Pinehurst, N.C.	1,600	18	2,450
Lumberton, N.C.	5,803	23	3,920
Wilmington, N.C.	33,407	133	11,970
			11,303(3)
TOTAL		1,291	109,753

Route 4: 180 Miles - One Flight Each Way Daily

Columbia, S.C.	62,396	123	16,690
Greenwood, S.C.	13,020	52	4,900
Anderson, S.C.	19,424	78	5,885
Greenville, S.C.	34,734	139	11,970
Asheville	51,310	108	11,970
Hendersonville	5,381		4,370
			5,052(3)
TOTAL		500	60,837

Route 5: 202 Miles - One Flight Each Way Daily

Winston-Salem, N.C.	79,815	159	16,400
Salisbury, N.C.	19,037	76	6,375
Concord, N.C.	15,572	62	5,175
Charlotte, N.C.	100,899	300	23,910
Rock Hill, S.C.	15,009	60	5,540
Chester, S.C.	6,392	25	3,550
Lancaster, S.C.	4,430	18	3,280
Camden, S.C.	5,747	23	3,280
Columbia, S.C.	62,396	150	16,690
			9,080(3)
TOTAL		873	93,280

CAB DOCKET
NO. 1422

Exhibit P1-55
Page 3 of 4 Pages

PIEDMONT AVIATION, INC.

M.P.E. OPERATION
ESTIMATE OF PASSENGERS(1) AND
MAIL(2) TO BE TRANSPORTED

Summary of M.P.E. Traffic Estimate

ROUTE	1	2	3	4	5 (1)	TOTAL
No. Passengers Monthly	1,354	1,286	1,291	500	873	5304
Av. Length of Journey	170	115	160	95	120	132
Number Passenger Miles Available Monthly	230,180	147,890	206,560	47,500	72,720	704,850
Sched. Plane Miles per Mo. (Basis - 30-day month)	46,680	27,960	48,000	10,800	12,120	145,560
Average Load Factor	82% 4.9	68% 5.3	72% 4.3	73% 4.4	100% 6.0	4.8
Pass. Revenue Monthly (at 5.5 per mile)	$10,887.51	$6,995.20	$9,770.29	$2,246.78	$3,439.62	$33,339.40
Passenger Revenue per Mile Flown	27.1	29.0	23.6	24.2	33.0	26.8

(1) If one flight each way daily

376

R. 7696

CAB DOCKET
NO. 1422

Exhibit PI-55
Page 4 of 4 Pages

R. 7697

PIEDMONT AVIATION, INC.

M.P.E. OPERATION

ESTIMATE OF PASSENGERS(1) AND MAIL(2) TO BE TRANSPORTED

Summary Estimate of Mail to be Dispatched on M.P.E. Routes

Route	Av. No. Pieces of Mail-Monthly	Gross Postal Rev. Monthly	
		Amt. at 8¢	Per Plane Mile
1	222,133	$17,770.64	40.0
2	109,583	8,766.64	32.9
3	109,753	8,780.24	19.5
4	60,837	4,866.96	47.5
5	93,320	7,465.60	32.4
TOTAL	595,626	$47,650.08	31.8

CAB DOCKET
NO. 1422

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Page 1 of 1 Page

R. 7699

PIEDMONT AVIATION, INC.

M.P.E. OPERATION

PRO-FORMA BALANCE SHEET

BEGINNING OF OPERATIONS

ASSETS

ACCOUNT NO.		
101	CASH	$117,410.00
102	PETTY CASH	1,500.00
110	MATERIALS AND SUPPLIES	20,000.00
111	MOTOR FUEL	3,000.00
112	LUBRICATING OIL	1,000.00
150	FLIGHT EQUIPMENT	272,840.00
155	OTHER PROPERTY AND EQUIPMENT	17,250.00
170	EXTENSION AND DEVELOPMENT	17,000.00
		$450,000.00

LIABILITIES AND NET WORTH

201	NOTES PAYABLE	$175,000.00
301	CAPITAL STOCK	275,000.00
		$450,000.00

CAB DOCKET
NO. 1422

Exhibit PI-57
Page 1 of 1 Page

R. 7700

PIEDMONT AVIATION, INC.

M.P.E. OPERATION

PRO-FORMA BALANCE SHEET

AT END OF ONE YEAR'S OPERATIONS

ASSETS

ACCOUNT NO.			
101	Cash		$169,447.50
102	Petty Cash		1,500.00
104	Accounts Receivable		
	U. S. Mail Pay	$ 55,464.56	
	Other Accounts Receivable	5,000.00	60,464.56
110	Materials and Supplies		20,000.00
111	Motor Fuel		3,000.00
112	Lubricating Oil		1,000.00
150	Flight Equipment	$272,840.00	
251	Less - Reserve for Depr.	49,111.20	223,728.80
155	Other Property and Equip.	$ 17,250.00	
271	Less - Reserve for Depr.	2,880.00	14,370.00
160	Deferred Charges		2,000.00
170	Extensions and Development		15,300.00
			$510,810.86

LIABILITIES AND NET WORTH

201	Notes Payable		$140,000.00
202	Accounts Payable		7,500.00
203	Accrued Liabilities		
	Salaries and Wages	$11,275.14	
	Taxes	40,535.72	
	Miscellaneous	500.00	52,310.86
301	Capital Stock		275,000.00
305	Surplus		36,000.00
			$510,810.86

CAB DOCKET
NO. 1422 (R-7781)

Exhibit P1-58
Page 1 of 1 Page

PIEDMONT AVIATION, INC.

M.P.E. OPERATION

OPERATING PROPERTY AND EQUIPMENT

ACCOUNT NO.	DESCRIPTION	BEGINNING OF OPERATIONS	ADDITIONS	ACCRUED DEPRECIATION	NET BOOK VALUE AT END OF FIRST YEARS OPERATIONS
150	FLIGHT EQUIPMENT				
1501	Aircraft	$213,240.00		$38,383.20	$174,856.80
1502	Aircraft Engines	45,000.00		8,100.00	36,900.00
1503	Aircraft Propellers	1,400.00		252.00	1,148.00
1504	Aircraft Radio Equipment	9,000.00		1,620.00	7,380.00
1508	Flight Equipment-Spare Parts	4,200.00		756.00	3,444.00
	TOTAL FLIGHT EQUIPMENT	$272,840.00	Ø	$49,111.20	$223,728.80
155	OTHER PROPERTY AND EQUIPMENT				
1551	Station Communication Equipment	$ 3,750.00		$ 675.00	$ 3,075.00
1552	Hangar and Shop Equipment	7,000.00		1,260.00	5,740.00
1554	Furniture and Fixtures	2,500.00		225.00	2,275.00
1555	Motor Vehicles and Equipment	4,000.00		720.00	3,280.00
	TOTAL OTHER PROPERTY AND EQUIPMENT	$ 17,250.00	Ø	$ 2,880.00	$ 14,370.00

CAB DOCKET
NO. 1422

Exhibit P1-59
Page 1 of 1 Page

PIEDMONT AVIATION, INC.

M.P.E. OPERATION

ACCOUNT NO. 170

AMORTIZATION OF EXTENSION AND DEVELOPMENT EXPENSES

DESCRIPTION		
Actual Expense to Date		
Salaries	$1,242.00	
Traveling Expenses	264.00	
Other	54.00	$1,560.00
Estimated Additional Expenses		
Salaries	$ 600.00	
Traveling Expenses	800.00	
Other, Including Printing	400.00	1,800.00
Legal Fees		500.00
Qualifying Expenses-Various States		400.00
Economist Research Fee		500.00
Familiarization Flights		
Qualification of 13 Pilots over 1404 miles		12,240.00
		$17,000.00
Annual Amortization on ten year basis		$ 1,700.00
Cents Per Revenue Mile		.1116

R. 7702

Exhibits PI-60 through PI-68 (R. 7703-7712) are estimates in connection with the proposed mail, passenger and express operation, based on the use of the Norseman plane as follows:

RECORD

VOLUME II

IN THE

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA

No. 9748

STATE AIRLINES, INCORPORATED, a Corporation,
Petitioner,

v.

CIVIL AERONAUTICS BOARD,
Respondent,

PIEDMONT AVIATION, INCORPORATED,
Intervenor.

PETITION FOR REVIEW OF ORDERS OF THE CIVIL AERONAUTICS BOARD

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PIEDMONT AVIATION, INC.

M.P.E. OPERATION R. 7703

STATEMENT OF PROFIT AND LOSS

FIRST YEARS OPERATIONS

ACCOUNT NO.	OPERATING REVENUES	AMOUNT	CENTS PER REV. MILE
35	Transportation		
351	Passenger	$403,064.12	26.46
352	Mail - U. S. Government	330,785.31	21.72
353	Express and Freight	15,230.43	1.00
	TOTAL OPERATING REVENUES	$749,079.86	49.18
	OPERATING EXPENSES		
40	Flight Operations	$299,460.20	15.72
45	Flight Equipment Maintenance - Direct	139,389.20	9.15
251	Depreciation - Flight Equipment	49,111.20	3.23
	TOTAL FLIGHT EXPENSES	$427,960.60	28.10
50	Ground Operations	76,047.64	4.99
55	Ground Equipment Maintenance - Direct	4,240.00	.28
60	Equipment Maintenance-Indirect	36,931.54	2.43
70	Traffic, Sales, Advertising, and Publicity	66,255.00	4.35
80	General and Administrative	62,654.36	4.11
271	Depreciation - Ground Equipment	2,880.00	.19
	TOTAL OTHER EXPENSES	$249,008.54	16.35
	TOTAL OPERATING EXPENSES	$676,969.14	44.45
	NET OPERATING INCOME	$ 72,110.72	4.73
95	Deductions from Income	7,825.00	.51
	NET INCOME BEFORE INCOME TAXES	$ 64,285.72	4.22
97	Income Taxes	28,285.72	1.86
	NET PROFIT FOR PERIOD	$ 36,000.00	2.36

CAB DOCKET
NO. 1422

Exhibit P1-61
Page 1 of 1 Page

PIEDMONT AVIATION, INC. R. 7704

M.P.E. OPERATION

SUMMARY
OPERATING EXPENSES

ACCOUNT NO.		ESTIMATED COSTS PER ANNUM	CENTS PER REV.MILE
40	Flight Operations	$239,460.20	15.7225
45	Flight Equipment Maintenance (Direct)	139,389.20	9.1520
50	Ground Operations	76,047.64	4.9931
55	Ground Equipment Maintenance - Direct	4,240.00	.2784
60	Equipment Maintenance - Indirect	36,931.54	2.4249
70	Traffic, Sales, Advertising, Publicity	66,255.00	4.3502
80	General and Administrative	62,654.36	4.1138
251	Depreciation - Flight Equipment	49,111.20	3.2245
271	Depreciation - Ground Equipment	2,880.00	.1891
		$676,969.14	44.4485

MILEAGE

Scheduled Miles	1,770,980
Expected Revenue Miles	1,523,043
Estimated Percentage of Schedules	86%

CAB DOCKET
NO. 1422

Exhibit P1-62
Page 1 of 2 Pages

PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

M.P.E. OPERATION

FLIGHT OPERATIONS

ACCOUNT NO.	DESCRIPTION		ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
401	Captains and Senior Pilots			
	13 Pilots at base pay of $1600.00 per annum	$20,800.00		
	Mileage Payments (including non-revenue miles) 1,549,608 at $.04 per mile	61,984.32	$ 82,784.32	5.4355
402	Other Flight Officers and Mechanics			
	13 Co-Pilots @ $200.00 per month, each		31,200.00	2.0485
403	Flight Crew Supplies and Expenses			
	Hotel Expenses - Expenses of 4 employees while away from base - Estimated at $45.00 per month, each	$ 2,160.00		
	Meal Allowances - Expenses of 4 employees while away from base - Estimated at $2.50 daily for each employee - 365 days	3,650.00		
	Transportation Expenses - Expenses of 4 employees while away from base - Estimated at $1.00 per day per employee - 365 days	1,460.00		
	Miscellaneous - Employees expenses in connection with unscheduled landings, layovers, etc.	2,000.00	9,270.00	.6086
404	Aircraft engine fuels, oils, taxes			
	Based on manufacturers and suppliers estimates		83,400.00	5.4759
409	Damage to Flight Equipment - All risks hull coverage			
	Estimated premium - $240,000.00 at 8½%		20,400.00	1.3394

365

R. 7705

PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

M.P.E. OPERATION

FLIGHT OPERATIONS

ACCOUNT NO.	DESCRIPTION		ESTIMATED COST PER ANNUM	CENTS PER REV. MILE
410	Damage to Flight Equipment - Reserve provision			
	Deductible in connection with all risks hull coverage		$ 2,400.00	.1576
412	Other Insurance - Flight			
	Public Liability and Property Damage - 8 aircraft @ $88.75	$710.00		
	Passenger Liability ($75,000.00 coverage) - 8 planes @ $775.05	6,200.40	6,910.40	.4537
413	Employees' Compensation and Other Insurance			
	Workmans Compensation - $2.71 per $100.00 - Salaries - $113,984.32	$3,088.98		
	Accident Insurance - $10,000.00 coverage each flight employee - company pays 1/2 premium - 26 flight employees @ $25.00	650.00	3,095.48	.2033
			$239,460.20	15.7225

CAB DOCKET
NO. 1422

Exhibit PI-63
Page 1 of 1 Page

PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES
M.P.E. OPERATION
FLIGHT EQUIPMENT MAINTENANCE - DIRECT

ACCOUNT NO.	DESCRIPTION	ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
451	Aircraft Repairs - Direct labor - Maintenance, periodic checks, tc. 2 A&E mechanics @ $3,380.00 per annum and 3 mechanic helpers @ $2,163.20 per annum	$ 13,249.60	.8699
452	Aircraft Repairs - Materials and outside repairs - Estimated at $2,250.00 per plane per year	18,000.00	1.1818
453	Aircraft Repairs - Outside overhauls - Estimated 1½ overhauls required per annum - Estimated cost per overhaul - $9,000.00	13,500.00	.8864
454	Aircraft Engine Repairs - Direct labor - Maintenance - 3 A&E mechanics @ $3,380.00 per annum and 3 mechanic helpers @ $2,163.20 per annum	16,629.60	1.0919
455	Aircraft Engine Repairs - Materials and outside repairs - Estimated at $650.00 per engine per annum	5,850.00	.3841
456	Aircraft Engine Repairs - Outside overhauls - Estimated 32 overhauls required per annum - Estimated cost per overhaul - $1,800.00	57,600.00	3.7819
457	Aircraft Instrument Repairs - Outside repairs	1,600.00	.1051
458	Aircraft Propeller Repairs - Outside repairs	5,400.00	.3546
460	Aircraft Radio Repairs - Direct labor - 2 mechanics @ $3,380.00 per annum	6,760.00	.4438
461	Aircraft Radio Repairs - Materials and outside repairs	800.00	.0525
		$139,389.20	9.1520

R. 7707

CAB DOCKET
NO. 1422

Exhibit P1-64
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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

M.P.E. OPERATION

GROUND OPERATIONS

ACCOUNT NO.	DESCRIPTION		ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
501	Vice President In charge of Operations		$ 7,800.00	.5121
502	Operations Assistant Manager - 1 required		3,000.00	.1970
503	Dispatchers - 2 required @ $300.00 per month		7,200.00	.4727
504	Communications Operators - 6 required @ $175.00 per month		12,600.00	.8273
505	Service Employees - 4 service attendants - Estimated @ $125.00 per month		6,000.00	.3939
506	Other Ground Employees			
	1 Secretary @ $150.00 per month	$ 1,800.00		
	1 Telephone Operator @ $115.00 per month	1,380.00	3,180.00	.2088
507	Travel and Incidental Expenses			
	Operations Manager - Estimated at $100.00 per month		1,200.00	.0788
508	Office Supplies and Expenses - Estimated		1,200.00	.0788
509	Telephone and Telegraph - Estimated		2,400.00	.1576
510	Rents of Fields, Buildings and Office			
	Landing field rents and charges - 132 regular scheduled landings - Estimated average at $18.64 per landing	$24,600.00		
	Hangar Rental - Storage of planes - 8 planes at $35.00 per month	3,360.00		
	Office Space - 4, at $50.00 per month	2,400.00	30,360.00	1.9934
511	Servicing Supplies and Expense - Estimated at $40 per month		480.00	.0315
512	Buildings, Contents and Liability Insurance			
	Radio transmitting and receiving stations - Value $3,750.00 at $1.25 per $100.00		46.88	.0031
513	Employees Compensation and Other Insurance			
	Service Employees - $6,000.00 salaries @ $.98 per $100.00	$ 58.80		
	Other Employees - $33,780.00 Salaries @ $.065 per $100.00	21.96	80.76	.0053
515	Other Ground Operations Expense - Miscellaneous - Estimated		500.00	.0328
			$76,047.64	4.9931

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R. 7708

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

M.P.E. OPERATION

GROUND EQUIPMENT MAINTENANCE-DIRECT

ACCOUNT NO.	DESCRIPTION	ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
552	Station Communication Equipment Repairs---- Materials and Outside Repairs	$ 800.00	.0525
554	Hangar and Shop Equipment Repairs---- Materials and Outside Repairs	800.00	.0525
555	Motor Vehicles Expenses---- Materials and Outside Repairs	2,640.00	.1734
		$4,240.00	.2784

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E. 7709

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

M.P.E. OPERATION

EQUIPMENT MAINTENANCE - INDIRECT

ACCOUNT NO.	DESCRIPTION		ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
601	Superintendent of Maintenance @ $433.33 per month		$ 5,200.00	.3414
602	Maintenance Foreman - 1 required - @ $300.00 per month		3,600.00	.2364
603	Stock and Stores Employees			
	2 Stockroom Clerks @ $150.00 per month	$3,600.00		
	1 Inspector @ $325.00 per month	3,900.00	7,500.00	.4924
604	Other Equipment Maintenance Employees			
	1 Secretary @ $150.00 per month	$1,800.00		
	1 Clerk @ $135.00 per month	1,620.00		
	1 Janitor @ $100.00 per month	1,200.00	4,620.00	.3033
605	Unallocated Shop Labor			
	Sick pay, vacation and unallocated time of mechanics - Estimated at 4½ of $36,639.20, direct labor payroll		1,648.76	.1083
607	Travel and Incidental Expenses - Estimated at $50.00 per month		600.00	.0394
608	Office Supplies and Expenses - Estimated at $100.00 per month		1,200.00	.0788
609	Telephone and Telegraph - Estimated		450.00	.0296
610	Rent Expense - Shop and Hangar - Estimated at $500.00 per month		6,000.00	.3939
611	Heat, Lights and Power - Estimated at $200.00 per month		2,400.00	.1576
615	Shop Supplies and Expenses - Estimated at $200.00 per month		2,400.00	.1576
616	Buildings, Contents and Liability - Equipment and Inventory		300.00	.0197
617	Employees Compensation and Other Insurance			
	Direct Maintenance Payroll - $36,639.20 at $.98	$ 359.06		
	Indirect Maintenance Payroll - $17,500.00 at $.98	171.50		
	Clerical Payroll - $3,420.00 at $.065	2.22	532.78	.0350
619	Other Equipment Maintenance Expenses - Estimated @ $40.00		480.00	.0315
			$36,931.54	2.4249

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R. 7710

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES
M.P.E. OPERATION

TRAFFIC, SALES, ADVERTISING AND PUBLICITY

ACCOUNT NO.	DESCRIPTION			ESTIMATED PER ANNUM	ESTIMATED CENTS PER REV. MILE
701	Vice President in charge of Traffic, Sales, Advertising and Publicity			$ 6,000.00	.3939
702	Traffic Assistants - 2 required @ $250.00 per month			6,000.00	.3939
703	Other Traffic and Sales Employees				
	2 Station Managers	@ $200.00 per month	$ 4,800.00		
	1 Supervisor of Agencies	@ $250.00 per month	3,000.00		
	1 Secretary	@ $150.00 per month	1,800.00	9,600.00	.6304
704	Travel and Incidental Expenses - Estimated $400.00 per month			4,800.00	.3152
705	Office Supplies and Expenses - Estimated annual expense			500.00	.0328
706	Telephone and Telegraph - Estimated annual expense			500.00	.0328
707	Agency Commission - Estimated at 5% of Passenger Revenues			20,155.00	1.3233
708	Tariffs and Schedules - Estimated annual expense			600.00	.0394
709	Tickets and Supplies - Estimated annual expense			600.00	.0394
710	Advertising Expenses - Estimated annual expense			2,500.00	.1642
711	Reservations Expense - Telephones			10,000.00	.6566
712	Passenger Developmental Program			5,000.00	.3283
				$66,255.00	4.3502

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

M.P.E. OPERATION

GENERAL AND ADMINISTRATIVE

ACCOUNT NO.	DESCRIPTION		ESTIMATED COST PER ANNUM	ESTIMATED COST CENTS PER REV. MILE
801	General Officers and Executives		$21,600.00	1.4182
802	General Office Employees			
	2 Accountants (Junior Grade) @ $200.00 per month	$4,800.00		
	2 Revenue Accounting Clerks @ $150.00 per month	3,600.00		
	1 Executive Secretary @ $150.00 per month	1,800.00		
	2 Stenographers @ $125.00 per month	3,000.00		
	1 Clerk @ $125.00 per month	1,500.00		
	1 Telephone Operator @ $115.00 per month	1,380.00	16,080.00	1.0558
803	Travel and Incidental Expenses			
	Travel Expenses of Officers - Estimated at $200.00 per month		2,400.00	.1576
804	Office Supplies and Expenses - Estimated at $200.00 per month		2,400.00	.1576
805	Telephone and Telegraph - Estimated		1,800.00	.1182
808	Legal and Professional Expenses		1,400.00	.0919
810	Memberships and Publications		800.00	.0525
815	General Taxes			
	State Franchise Taxes and Miscellaneous Licenses	$1,000.00		
	Social Security and Employment Taxes - Estimated at 4% on payroll of $221,859.20	8,874.36		
	Property and Miscellaneous Taxes - Estimated	5,000.00	14,874.36	.9766
816	Buildings, Contents and Liability Insurance Equipment and Supplies - Estimated		100.00	.0066
818	Other Expenses - Estimated at $100.00 per month		1,200.00	.0788
			$62,654.36	4.1138

R. 7712

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PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

M.P.E. OPERATION

DEPRECIATION - FLIGHT EQUIPMENT

ACCOUNT NO.	EQUIPMENT REQUIRED		COST	SALVAGE VALUE	DEPRE. COST	LIFE	ANNUAL DEPRE.	COST PER REV. MILE
1501	AIRCRAFT (including propellers - 8 required	@$26,655.00	$213,240.00	$21,324.00	$191,916.00	5 yrs.	$38,383.20	2.5202
1502	AIRCRAFT ENGINES - 9 required	@ 5,000.00	45,000.00	4,500.00	40,500.00	5 yrs.	8,100.00	.5318
1503	AIRCRAFT PROPELLERS - 1 spare		1,400.00	140.00	1,260.00	5 yrs.	252.00	.0165
1504	AIRCRAFT RADIOS - 9 required	@ 1,000.00	9,000.00	900.00	8,100.00	5 yrs.	1,620.00	.1064
1508	SPARE PARTS - 4 sets of instruments	@ 1,050.00	4,200.00	420.00	3,780.00	5 yrs.	756.00	.0496
			$272,840.00	$27,284.00	$245,556.00		$49,111.20	3.2245

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R. 7713

PIEDMONT AVIATION, INC.

ESTIMATED COST OF OPERATION OF PROPOSED ROUTES

M.P.E. OPERATION

DEPRECIATION - GROUND EQUIPMENT

ACCOUNT NO.	EQUIPMENT REQUIRED		COST	SALVAGE VALUE	DEPRE. COST	LIFE	ANNUAL DEPRE.	COST CENTS PER REV. MILE
1551	STATION COMMUNICATION EQUIPMENT							
	3 Transmitting and receiving stations installed	@$1,250.00	$ 3,750.00	$ 375.00	$ 3,375.00	5 yrs.	$ 675.00	.0443
1552	HANGAR AND SHOP EQUIPMENT							
	Operating Base		7,000.00	700.00	6,300.00	5 yrs.	1,260.00	.0827
1554	FURNITURE AND FIXTURES		2,500.00	250.00	2,250.00	10 yrs.	225.00	.0148
1555	MOTOR VEHICLES AND EQUIPMENT							
	1-3/4 ton Pick-Up Truck	@ 1,100.00						
	1 Station Wagon	@ 1,500.00						
	1 Automobile	@ 1,400.00	4,000.00	400.00	3,600.00	5 yrs.	720.00	.0473
			$17,250.00	$1,725.00	$15,525.00		$2,880.00	.1891

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PIEDMONT AVIATION, INC. R. 7715

M.P.E. OPERATION

ACCOUNT NO.			CENTS PER REV. MILE
	NON-OPERATING INCOME		
	TOTAL NON-OPERATING INCOME	NONE	
95	DEDUCTIONS FROM INCOME		
951	Extensions and Development	$1,700.00	.1116
952	Interest on Borrowed Capital	$6,125.00	.4022
		$7,825.00	.5138

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PIEDMONT AVIATION, INC.

M.P.E. OPERATION

R. 7716

INVESTMENT REQUIRED

CASH	$118,910.00
INVENTORY	20,000.00
MOTOR FUEL	3,000.00
LUBRICATING OIL	1,000.00
FLIGHT EQUIPMENT	272,840.00
OTHER EQUIPMENT	17,250.00
DEVELOPMENT EXPENSE INCURRED	17,000.00
TOTAL INVESTED CAPITAL	$450,000.00
8% RETURN ON INVESTED CAPITAL	$ 36,000.00
REVENUE REQUIRED TO PRODUCE 8% AFTER 40% FEDERAL TAX AND 6% STATE TAX	$ 64,285.72
CENTS PER REVENUE MILE	4.2209

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PIEDMONT AVIATION, INC.

R. 7717

M.P.E. OPERATION

PERSONNEL REQUIRED

NO. OF EMPLOYEES		MONTHLY SALARY RATE	MONTHLY SALARIES	ANNUAL SALARIES
1	Vice President in charge of Operations	$650.00	$ 650.00	$ 7,800.00
1	Assistant Operations Manager	250.00	250.00	3,000.00
13	Pilots	530.67	6,898.69	82,784.32
13	Co-Pilots	200.00	2,600.00	31,200.00
2	Dispatchers	300.00	600.00	7,200.00
6	Communications Operators	175.00	1,050.00	12,600.00
4	Service Attendants	125.00	500.00	6,000.00
1	Secretary to Operations Manager	150.00	150.00	1,800.00
2	Telephone Operators	115.00	230.00	2,760.00
1	Superintendent of Maintenance	433.33	433.33	5,200.00
1	Inspector - Maintenance	325.00	325.00	3,900.00
1	Maintenance Foreman	300.00	300.00	3,600.00
5	A&E Mechanics	281.67	1,408.33	16,900.00
6	Mechanic Helpers	180.27	1,081.60	12,979.20
2	Radio Mechanics	281.67	563.33	6,760.00
1	Secretary - Maintenance	150.00	150.00	1,800.00
2	Stockroom Clerks	150.00	300.00	3,600.00
1	Clerk - Maintenance	135.00	135.00	1,620.00
1	Janitor - Maintenance	100.00	100.00	1,200.00
1	Vice President in charge of Traffic, Sales, Advertising, and Publicity	500.00	500.00	6,000.00
2	Traffic Assistants	250.00	500.00	6,000.00
2	Station Managers	200.00	400.00	4,800.00
1	Supervisor of Agencies	250.00	250.00	3,000.00
1	Secretary - Traffic	150.00	150.00	1,800.00
2	Accountants (Junior Grade) - General Office	200.00	400.00	4,800.00
2	Revenue Accounting Clerks	150.00	300.00	3,600.00
1	Secretary - Executive Offices	150.00	150.00	1,800.00
2	Stenographers - General Offices	125.00	250.00	3,000.00
1	Clerk - General Offices	125.00	125.00	1,500.00
	Executive Officers (2)	1,800.00	1,800.00	21,600.00
			$22,550.28	$270,603.52

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R. 7718

PIEDMONT AVIATION, INC.

M.P.E. OPERATION

MAIL PAY REQUIRED TO COVER
COST OF OPERATIONS AND 8% RETURN ON INVEST CAPITAL

TOTAL OPERATING EXPENSES	44.45
DEDUCTION FROM INCOME	.51
8% RETURN ON INVESTED CAPITAL	4.22
	49.18
REVENUE FROM PASSENGERS AND EXPENSES	27.46
MAIL PAY REQUIRED	21.72

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PIEDMONT AVIATION, INC.

SCHEDULED M.P.E. MILES AND HOURS

ROUTES		DAILY MILES	DAILY HOURS	YEARLY MILES	YEARLY HOURS
1	Winston-Salem - Washington, D. C.--Via Hagerstown	1,556	12:40	567,940	4,623:20
2	Norfolk, Virginia - Roanoke, Virginia	932	7:36	340,180	2,774:00
3	Wilmington, N.C. - Knoxville, Tennessee	1,600	13:04	584,000	4,769:20
4	Columbia, S.C. - Asheville-Hendersonville, N.C.	360	2:56	131,400	1,070:40
5	Winston-Salem, N.C. - Columbia, S.C.	404	3:18	147,460	1,204:30
		4,852	39:34	1,770,980	14,441:50
	ANNUAL EXPECTANCY 86%				
		4,173	34:92	1,523,043	12,420:00

ESTIMATED NON-REVENUE MILES---------26,565

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R. 7719

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R. 7720

PIEDMONT AVIATION, INC.

M.P.E. OPERATION

COMPUTATION OF FLIGHT MILEAGE

ROUTES	ROUTE MILES		DAILY SCHEDULED MILES		OPERATING DAYS		ANNUAL SCHEDULED MILES
1	389 x 4	=	1,556	x	365	=	567,940
2	233 x 4	=	932	x	365	=	340,180
3	400 x 4	=	1,600	x	365	=	584,000
4	180 x 2	=	360	x	365	=	131,400
5	202 x 2	=	404	x	365	=	147,460
	1,404		4,852				1,770,980

COMPUTATION OF FLIGHT HOURS

ROUTES	TRIP HOURS		DAILY SCHEDULED HOURS		OPERATING DAYS		ANNUAL SCHEDULED HOURS
1	3:10 x 4	-	12:40	x	365	-	4,623:20
2	1:54 x 4	-	7:36	x	365	-	2,774:00
3	3:16 x 4	-	13:04	x	365	-	4,769:20
4	1:28 x 2	-	2:56	x	365	-	1,070:40
5	1:39 x 2	-	3:18	x	365	-	1,204:30
			39:34				14,441:50

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PIEDMONT AVIATION, INC. R. 7721

M.P.E. OPERATION

COMPUTATION OF PASSENGER REVENUE

ROUTES	AVERAGE LOAD FACTOR		PASS RATE		AVERAGE PASS. REV. PER MILE		ANNUAL REV. MILE		ESTIMATED ANNUAL PASS. REV.
1	4.86	x	5.5	=	26.73	x	488,428	=	$130,556.80
2	5.36	x	5.5	=	29.48	x	292,555	=	86,245.21
3	4.24	x	5.5	=	23.32	x	502,240	=	117,122.37
4	4.39	x	5.5	=	24.15	x	113,004	=	27,290.46
5	6.00	x	5.5	=	33.00	x	126,816	=	41,849.28
	4.81		5.5		26.46		1,523,043		$403,064.12

Exhibits PI-78 through PI-90 (R. 7723-7737) are accounting statements on the combined airmail pick-up and M. P. E. operation, each entitled or printed as follows:

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PIEDMONT AVIATION, INC.

R. 7723

PRO-FORMA BALANCE SHEET

COMBINED AIRMAIL PICK-UP AND M. P. E. OPERATION

BEGINNING OF OPERATIONS

ASSETS

ACCOUNT NO.		
101	CASH	$ 288,854.95
102	PETTY CASH	2,000.00
110	MATERIALS AND SUPPLIES	40,000.00
111	MOTOR FUEL	3,000.00
112	LUBRICATING OIL	1,000.00
150	FLIGHT EQUIPMENT	643,550.00
155	OTHER PROPERTY AND EQUIPMENT	68,970.05
170	EXTENSION AND DEVELOPMENT	52,628.00
		$1,100,000.00

LIABILITIES AND NET WORTH

201	NOTES PAYABLE	$ 400,000.00
301	CAPITAL STOCK	700,000.00
		$1,100,000.00

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PIEDMONT AVIATION, INC.

COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION

PRO-FORMA BALANCE SHEET

AT END OF ONE YEARS OPERATION

ASSETS

ACCOUNT NO.			
101	Cash		$ 302,000.53
102	Petty Cash		2,000.00
104	Accounts Receivable		
	U. S. Mail Pay	$255,000.00	
	Other Accounts Receivable	7,000.00	262,000.00
110	Materials and Supplies		40,000.00
111	Motor Fuel		3,000.00
112	Lubricating Oil		1,000.00
150	Flight Equipment	$643,550.00	
251	Less - Reserve for Depreciation	115,839.00	527,711.00
155	Other Property and Equipment	$ 68,970.05	
271	Less - Reserve for Depreciation	12,179.47	56,790.58
160	Deferred Charges		4,000.00
170	Extension and Development		47,365.20
			$1,245,867.31

LIABILITIES AND NET WORTH

201	Notes Payable		$ 315,000.00
202	Accounts Payable		17,500.00
203	Accrued Liabilities		
	Salaries and Wages	$ 34,474.45	
	Taxes	90,142.86	
	Miscellaneous	750.00	125,367.31
301	Capital Stock		700,000.00
305	Surplus		88,000.00
			$1,245,867.31

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PIEDMONT AVIATION, INC.

COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION

OPERATING PROPERTY AND EQUIPMENT

ACCOUNT NO.	DESCRIPTION	BEGINNING OF OPERATIONS	ADDITIONS	ACCRUED DEPRECIATION	NET BOOK VALUE AT END OF FIRST YEARS OPERATIONS
	FLIGHT EQUIPMENT				
150	Aircraft	$422,240.00		$ 76,003.20	$346,236.80
1501	Aircraft Engines	141,000.00		25,380.00	115,620.00
1502	Aircraft Propellers	30,200.00		5,436.00	24,764.00
1503	Aircraft Radio Equipment	31,000.00		5,580.00	25,420.00
1504	Flight Equipment - Miscellaneous	14,910.00		2,683.80	12,226.20
1505	Flight Equipment - Spare Parts	4,200.00		756.00	3,444.00
1508	TOTAL FLIGHT EQUIPMENT	$643,550.00	Ø	$115,839.00	$527,711.00
	OTHER PROPERTY AND EQUIPMENT				
155	Station Communication Equipment	$ 19,270.00		$ 3,468.60	$ 15,801.40
1551	Hangar and Shop Equipment	16,176.25		2,911.73	13,264.52
1552	Furniture and Fixtures	6,923.80		623.14	6,300.66
1554	Motor Vehicles and Equipment	7,200.00		1,296.00	5,904.00
1555	Miscellaneous Ground Equipment	19,400.00		3,880.00	15,520.00
1558	TOTAL OTHER PROPERTY AND EQUIPMENT	$ 68,970.05	Ø	$ 12,179.47	$ 56,790.58

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R. 7725

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R. 7726

PIEDMONT AVIATION, INC.

COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION

ACCOUNT NO. 170

AMORTIZATION OF EXTENSION AND DEVELOPMENT EXPENSES

DESCRIPTION		
Actual Expenses to Date		
Salaries	$ 5,496.00	
Traveling Expenses	1,746.00	
Other Expenses	296.00	$ 7,538.00
Estimated Additional Expenses		
Salaries	$ 2,600.00	
Traveling Expenses	2,600.00	
Other, including Printing	1,400.00	6,600.00
Legal Fees		1,250.00
Qualifying Expenses - Various States		1,000.00
Economist Research Fee		1,500.00
Establishment of Pick-Up Sites, Employment of Messengers, etc.		2,500.00
Familiarization Flights		
Qualification of 29 Pilots over 4,359 Miles	$20,000.00	
Qualification of 13 Pilots over 1,404 Miles	12,240.00	32,240.00
		$52,628.00
Annual Amortization on ten year basis		$ 5,262.80
Cents Per Revenue Mile		.1180

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PIEDMONT AVIATION, INC.

COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION

STATEMENT OF PROFIT AND LOSS

FIRST YEARS OPERATIONS

ACCOUNT NO.			AMOUNT	CENTS PER REV. MILE
	OPERATING REVENUES			
35	TRANSPORTATION			
351	Passenger		$ 403,064.12	9.04
352	Mail - U. S. Government			
	Airmail Pick-Up (2,936,040 miles at 40.99¢)	$1,203,572.48		
	M.P.E. (1,523,043 miles at 13.30¢)	202,478.24	1,406,050.72	31.53
353	Express and Freight		44,590.83	1.00
	TOTAL OPERATING EXPENSES		$1,853,705.67	41.57
	OPERATING EXPENSES			
40	Flight Operations		627,797.44	14.08
45	Flight Equipment Maintenance - Direct		319,367.20	7.16
251	Depreciation - Flight Equipment		115,839.00	2.60
	TOTAL FLIGHT EXPENSES		$1,063,003.44	23.84
50	Ground Operations		353,812.52	7.94
55	Ground Equipment Maintenance - Direct		12,420.00	.28
60	Equipment Maintenance - Indirect		53,461.61	1.20
70	Traffic, Sales, Advertising, and Publicity		73,755.00	1.65
80	General and Administrative		108,667.97	2.44
271	Depreciation - Ground Equipment		12,179.47	.27
	TOTAL OTHER EXPENSES		$ 614,296.57	13.78

R. 7427

CAB DOCKET
NO.. 1422

Exhibit P1-82
Page 2 of 2 Pages

PIEDMONT AVIATION, INC.

COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION

STATEMENT OF PROFIT AND LOSS

FIRST YEARS OPERATIONS

ACCOUNT NO.		AMOUNT	CENTS PER REV. MILE
	TOTAL OPERATING EXPENSES	$1,677,300.01	37.62
	NET OPERATING INCOME	$ 176,405.66	3.95
95	Deductions from Income	19,262.80	.43
	NET INCOME BEFORE INCOME TAXES	$ 157,142.86	3.52
97	Income Taxes	69,142.86	1.55
	NET PROFIT FOR PERIOD	$ 88,000.00	1.97

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R. 7728

CAB DOCKET
NO. 1422

Exhibit P1-83
Page 1 of 1 Page

PIEDMONT AVIATION, INC.

COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION

SUMMARY - OPERATING EXPENSES

ACCOUNT NO.		AIRMAIL PICK-UP ESTIMATED COST	AIRMAIL PICK-UP ¢ PER REV.MI.	M.P.E. ESTIMATED COST	M.P.E. ¢ PER REV.MI.	SAVINGS EFFECTED BY COMBINED SERVICE EST.COST REDUCTION	SAVINGS EFFECTED BY COMBINED SERVICE ¢ PER REV.MI.	COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION ESTIMATED COST	COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION ¢ PER REV.MI.
40	Flight Operations	$ 388,337.04	13.22	$239,460.20	15.72	Ø	Ø	$ 627,797.24	14.08
45	Flight Equipment Maintenance-Direct	192,281.20	6.55	139,389.20	9.15	$ 12,303.20	.28	319,367.20	7.16
50	Ground Operations	308,616.10	10.51	76,047.64	4.99	30,851.22	.69	353,812.52	7.94
55	Ground Equipment Maintenance-Direct	10,500.00	.36	4,240.00	.28	2,320.00	.05	12,420.00	.28
60	Equipment Maintenance -Indirect	46,928.00	1.60	36,931.54	2.43	30,397.93	.68	53,461.61	1.20
70	Traffic, Sales, Advertising, and Publicity	19,600.00	.67	66,255.00	4.35	12,100.00	.27	73,755.00	1.65
80	General and Administrative	83,385.33	2.84	62,654.36	4.11	37,371.72	.84	108,667.97	2.44
251	Depreciation - Flight Equipment	67,483.80	2.30	49,111.20	3.23	756.00	.02	115,839.00	2.60
271	Depreciation - Ground Equipment	11,441.47	.39	2,880.00	.19	2,142.00	.05	12,179.47	.27
		$1,128,572.94	38.44	$676,969.14	44.45	$128,242.07	2.88	$1,677,300.01	37.62
MILEAGE	Scheduled Miles	3,191,348		1,770,980		4,962,328		4,962,328	
	Expected Revenue Miles	2,936,040		1,523,043		4,459,083		4,459,083	
	Estimated % of Schedules	92%		86%					

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R. 7729

Exhibit PI-84 (R. 7730-7731) *Estimated Savings Effected by Operation of Combined Service Airmail Pick-Up and M. P. E. Operation.*

Exhibit PI-85 (R. 7732) *Estimated Personnel Reduction.*

Exhibit PI-86 (R. 7733) *Saving on Amortization of Extension and Development Expenses.*

Exhibit PI-87 (R. 7734) *Equipment Savings.*

CAB DOCKET
NO. 1422

Exhibit PI-88
Page 1 of 1 Page

PIEDMONT AVIATION, INC.

COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION

DEPRECIATION - FLIGHT EQUIPMENT

ACCOUNT NO.	EQUIPMENT REQUIRED	COST	SALVAGE VALUE	DEPRE. COST	LIFE	ANNUAL DEPRE.	CENTS PER REV. MILE
1501	Aircraft - 27 required, including 8 propellers	$422,240.00	$42,224.00	$380,016.00	5 yrs.	$ 76,003.20	1.70
1502	Aircraft Engines - 33 required	141,000.00	14,100.00	126,900.00	5 yrs.	25,380.00	.57
1503	Aircraft Propellers - 25	30,200.00	3,020.00	27,180.00	5 yrs.	5,436.00	.12
1504	Aircraft Radios - 31	31,000.00	3,100.00	27,900.00	5 yrs.	5,580.00	.13
1505	Miscellaneous Flying Equipment - 426 containers	14,910.00	1,491.00	13,419.00	5 yrs.	2,683.80	.06
1508	Spare Parts - 4 sets spare instruments	4,200.00	420.00	3,780.00	5 yrs.	756.00	.02
		$643,550.00	$64,355.00	$579,195.00		$115,839.00	2.60

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R. 7735

CAB DOCKET
NO. 1422

Exhibit PI-89
Page 1 of 1 Page

PIEDMONT AVIATION, INC.

COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION

DEPRECIATION - GROUND EQUIPMENT

ACCOUNT NO.	EQUIPMENT REQUIRED		COST	SALVAGE VALUE	DEPRE. COST	LIFE	ANNUAL DEPRE.	CENTS PER REV. MILE
1551	Station Communication Equipment							
	3 transmitting and receiving station installed at $1,250.00	$ 3,750.00						
	194 Messenger Radios -Installed at $80 ea.	15,520.00	$19,270.00	$1,927.00	$17,343.00	5 yrs.	$ 3,468.60	.08
1552	Hanger and Shop Equipment							
	Operating base	$13,756.25						
	Sub-bases	2,420.00	16,176.25	1,617.62	14,558.63	5 yrs.	2,911.73	.07
1554	Furniture and Fixtures		6,923.80	692.38	6,231.42	10 yrs.	623.14	.01
1555	Motor Vehicles and Equipment							
	1 3/4 ton Pick-Up Truck	$1,100.00						
	1 Panel Truck	1,800.00						
	1 Station Wagon	1,500.00						
	2 Automobiles	2,800.00	7,200.00	720.00	6,480.00	5 yrs.	1,296.00	.02
1558	Miscellaneous Ground Equipment							
	194 Ground Stations and Storage Boxes		19,400.00	Ø	19,400.00	5 yrs.	3,880.00	.09
			$68,970.05	$4,957.00	$64,013.05		12,179.47	.27

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R. 7736

R. 7737

PIEDMONT AVIATION, INC.

COMBINED AIRMAIL PICK-UP AND M.P.E. OPERATION

INVESTMENT REQUIRED

CASH	$ 290,851.95
INVENTORY	40,000.00
MOTOR FUEL	3,000.00
LUBRICATING OIL	1,000.00
FLIGHT EQUIPMENT	643,550.00
OTHER EQUIPMENT	68,970.05
DEVELOPMENT EXPENSE INCURRED	52,628.00
TOTAL INVESTED CAPITAL	$1,100,000.00
8% RETURN ON INVESTED CAPITAL	$ 88,000.00
REVENUE REQUIRED TO PRODUCE 8% AFTER 40% FEDERAL AND 6% STATE TAXES	$ 157,142.86
CENTS PER REVENUE MILE	3.52

PI-91
7738

COMPARATIVE BALANCE SHEET

	Aug. 6 1940	Dec. 31 1940	Dec. 31 1941	Dec. 31 1942	Dec. 31 1943	Dec. 31 1944
ASSETS						
CURRENT ASSETS						
Cash	$ 4,722.00	$ 618.10	$ 9,471.09	$ 1,507.13	$ 38,585.99	$ 9,596.91
U. S. Treasury Notes - 2 1/4	ø	ø	ø	ø	ø	21,150.94
Accounts Receivable	4,311.35	4,936.46	25,408.77	64,809.43	118,244.19	9,147.64
Inventories	4,784.58	10,215.34	42,844.66	13,987.78	15,397.96	45,659.50
	$13,817.93	$15,769.90	$77,724.52	$80,304.39	$172,228.14	$85,554.99
FIXED ASSETS						
Planes, Buildings and Equipment - Net	8,891.64	11,292.16	56,292.87	40,708.02	15,733.44	30,779.27
OTHER ASSETS						
Accounts Receivable Employees	ø	ø	1,144.28	371.95	2,773.46	288.04
Excess Profits Tax Refund Bond	ø	ø	ø	227.41	2,270.56	2,270.56
Accrued Receivables	ø	ø	ø	ø	ø	3,195.29
Deposits with Treasury Department	ø	ø	ø	ø	ø	9,000.00
	ø	ø	$ 1,144.28	$ 599.36	$ 5,044.02	$14,753.89
DEFERRED CHARGES						
Unexpired Insurance	ø	ø	6,366.20	5,841.76	3,120.53	1,594.88
Prepaid Interest	ø	ø	175.48	531.73	18.54	ø
	ø	ø	$ 6,373.49	$ 6,373.49	$ 3,139.07	$ 1,594.88
	$22,709.57	$27,062.06	$141,703.35	$127,985.21	$196,144.67	$132,683.03

COMPARATIVE BALANCE SHEET

	Aug. 6 1940	Dec. 31 1940	Dec. 31 1941	Dec. 31 1942	Dec. 31 1943	Dec. 31 1944
LIABILITIES						
CURRENT LIABILITIES						
Notes Payable	$ 3,810.57	$ 2,188.58	$ 82,454.98	$56,670.46	$ 12,500.00	$ -
Accounts Payable	1,001.06	5,739.54	17,869.47	16,131.37	24,781.02	8,568.55
Customers Deposits	5,087.94	-	-	130.80	878.22	3,258.71
Accrued Liabilities	-	822.33	3,021.38	20,100.56	59,604.94	33,947.21
Mortgage Payable	-	-	9,712.00	-	-	-
Reserve-Maintenance of W.T.S. Planes	-	-	-	-	12,278.17	-
	$ 9,899.57	$ 8,750.45	$113,057.83	$ 93,039.19	$110,042.35	$ 45,774.47
REPLACEMENT FUND						
Reserve for Airplane Replacement	-	-	-	-	26,632.15	26,632.15
NET WORTH						
Capital Stock	12,810.00	15,880.00	24,830.00	24,150.00	30,000.00	30,000.00
Surplus	-	2,431.61	3,815.52	10,796.02	29,470.17	30,276.41
	$12,810.00	$18,311.61	$ 28,645.52	$ 34,946.02	$ 59,470.17	$ 60,276.41
	$22,709.57	$27,062.06	$141,703.35	$127,985.21	$196,144.67	$132,683.03

Source: Report of Audit
Piedmont Aviation, Inc.
Winston-Salem, N. C.
R. C. Birmingham & Co,
Certified Public Accountants
Winston-Salem, N. C.

6. The direct testimony and cross-examination of Piedmont Aviation, Inc., witnesses at the hearing, June 14, 1945. Record Vol. 5.

[R. 2886]

Dr. C. K. Brown was called as a witness on behalf of Piedmont Aviation, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Sandridge:

Q. Will you state your name, doctor? A. C. K. Brown, Davidson, North Carolina.

Q. Dr. Brown, are your qualifications as stated in PI

[R. 2887]

Exhibit 1? A. Yes, sir.

Q. Which exhibits of Piedmont Aviation, Incorporated, do you sponsor? A. 16 to 24, inclusive, and 51 to 55, inclusive.

Q. You also sponsor 24-A, do you not? A. I suppose that is included in 24 (referring to documents). Yes, sir.

Q. Were these exhibits prepared by you, or under your supervision and direction? A. Yes, sir.

Q. And are they correct? A. To the best of my knowledge and believe, with some exceptions; a few errors to which I would like to call attention as we proceed.

Q. Now, doctor, before going on to the particular exhibits which you sponsor, will you make any general statement you care to make about the public convenience and necessity of air mail pick-up services and so-called feeder service in the Southeastern area and the feasibility of Piedmont's proposals? A. I would like to make a statement; yes, sir. The study as I have made it is an economic analysis of the Virginia-Carolinas region. I take it that in so far as it applies to the application of Piedmont Aviation Corporation, such an analysis is called for.

We are dealing here with what may be called the second phase of the development of air transportation, the first phase being the development of so-called trunk lines connect-

[R. 2888]

ing the larger centers of population, industry and trade.

The second phase consists of the extension of air service to smaller places and it is commonly held, I believe, that

such an extension can best be done on the basis of trade areas in which the transportation problem can be fairly definitely and clearly defined so that the carrier can devote its energies to a solution of a rather definite problem.

In this area, which for convenience I should like to call the south Atlantic area, we have an area that can be readily defined. It has a definite bound on the west in the mountains and the northern end the mountains and the sea bring it to a rather narrow point, giving us important centers at that end in Washington, Richmond, Norfolk.

It is less easy to define at the southern end. Atlanta, sitting at the base of the mountains, dominates a considerable portion of the southern portion of the United States but its influence is limited in the northward direction.

In this area Richmond, as a trade center, is historically the most important but within the past generation the influence of Richmond in the Carolinas has been greatly reduced. It extends now approximately to the Raleigh-Greensboro-Winston-Salem line, whereas formerly it extended throughout the state of North Carolina.

Today Richmond's principal influence extends westward in the state of Virginia, which it presently completely dominates as a wholesale center.

Within the past 25 years Charlotte has become increasingly important as a trade center, now having a volume of

[R. 2889]

wholesale trade equal to that of Richmond. In view of the rather small population of Charlotte, its wholesale trade is rather startling. I was able to find only two cities in the United States with the per capita wholesale trade higher than that of Charlotte. So that the influence of Charlotte extends over a considerable area of the two Carolinas.

Yet there are other important centers of trade in this region; ten or twelve secondary trade centers; and these are of such importance that it seems to me not feasible to construct a system of local transportation on the radial basis. That is, there is no one center in this region of such importance that it could serve as a hub, with spokes running

out to minor points. The situation seems to call for an irregular grid pattern for local transportation. These secondary centers have much more community of interest with one another than you would find in an area dominated by one center and having very small ones lying around it.

The general trend of movement, of course, in this region, is towards the northeast where the great centers of population and of industry are found. If you note railroad schedules, for instance, the farther north you proceed, the more schedules you find. Heavy development, then, it seems to me, is called for in the northern portion of the region. In the southern portion local lines ought, of course, to enter Atlanta but they ought not, I think, to encroach upon the regional territory of some carrier making Atlanta its principal center. That is, the area south of a line drawn from Charleston over

[R. 2890]

to Atlanta is not properly a part of the regional problem that I am talking about. It is not such a part if the problem of local transportation is to be dealt with on a regional basis.

Now I might say, concerning the industry of this region, that of course North Carolina has the largest manufacturing industry, although Richmond is the first city in manufacturing south of the Potomac and the Ohio. Although the census does not publish the figures for Winston-Salem, I believe it will rank second, exceeding any point to the south, and including Atlanta, Birmingham, New Orleans and Memphis.

Despite the size of Winston as a manufacturing center, the manufacturing industry in North Carolina is rather widely distributed in a number of small towns and this again indicates that the pattern of local transportation ought to provide varied routes and not simply routes converging upon one center.

The same thing goes for the Piedmont area of South Carolina.

I believe, Mr. Sandridge, that is all that I shall say by way of introduction.

Q. Dr. Brown, will you go on, then, to the exhibits which you sponsor and make any comments that you care to make about them, showing their purpose? A. Yes, sir. There are some facts that may require emphasis or explanation. On page 4 of Exhibit 16, the relative importance of the wholesale centers serving this area is given. I might say that

[R. 2891]

Baltimore is included because of its historic importance to this region, and for purposes of comparison, although the influence of Baltimore like that of Richmond has been declining.

We see a number of these cities with important volumes of wholesale trade. The ratios on the right indicate the importance of wholesale to retail and that can be compared with the ratio in the United States, which is 1.3. I call particular attention to the very high ratio of 4.4 in the case of Charlotte and 2.2 in the case of Danville, which is a very special case. Danville is not really to be included as one of the main focuses of trade in this region. Atlanta, of course, shows a quite high ratio, too.

. . . . . .

Q. (Continuing) When you were using the figure of Charlotte, 4.4, does that mean that there are 4.4 as much wholesale trade as retail trade in the city of Charlotte? A. Yes, sir. On page 5 we may note that Charlotte experienced a growth in wholesale trade in the decade between 1929 and 1939 of 12.4%. Greensboro and Winston-Salem both experienced considerable increase, whereas nearly all other points in this region experienced a decline, as did the United States as a whole. Some points, such as Asheville, are definitely becoming less important as wholesale centers. They may be becoming more important in other respects.

Q. Generally speaking, doctor, before you pass the wholesale exhibits, what is the general purpose of the exhibits

[R. 2892]

dealing with wholesale trade? A. The general purpose is

to show the considerable volume of wholesale trade found at this rather large number of points in the area and this particular exhibit also shows the changes in that wholesale trade over the decade of the '30s.

Page 6 gives financial data for the more important points and the same data covering all the trade, focal trade points of the area given in Exhibit 21, so I shall not tarry on that.

On Exhibit 17, page 2, the map is incomplete in some respects and in error in one. The line from Charleston should go to Charlottesville and not to Lynchburg. It shows seven schedules and the figure 12 applies only to the segment between Lynchburg and Charlottesville. The figure is 15, between Charlottesville and Washington.

Q. This exhibit also shows, does it not, during the increased number of train schedules, the farther north you go in the southeastern—— A. Yes, sir. That is the point I touched upon a while ago. The principal omissions from this map are the line from Charlottesville to Norfolk via Richmond, which should show four schedules, and from Atlanta to Hamlet, on the Seaboard, just inside North Carolina, which should show three. There are likewise three schedules from Wilmington to Wilson, on the Atlantic Coast Line, not far from the Virginia border. I regret that I did not check this map after it went to the printer.

Exhibit 18, I believe, requires no comment. It indicates the considerable degree of growth that these cities have en-

[R. 2893]

joyed in population in the past 40 years.

Q. Do you have the percentage increase for the United States as a whole? A. Yes, sir. The percentage for the United States as a whole from 1900 to 1920 was 39.1. From 1920 to 1940, 20.6.

The next exhibit upon which I would comment is number 19, page 1. This exhibit is intended to throw light upon the pattern of trade in the area. We note the small percentage of the total trade of the state found in these various points.

Richmond is the only one of these cities that has more than approximately 10% of the total trade of the state in which it is situated. Particularly in North Carolina we see the wide distribution of retail trade, 30.8% of the state being distributed among seven focal points.

In Exhibit 20, page 1, on the right, I took the ratio of wholesale to retail trade, which is already indicated as 1.3 for the United States, and undertook to make an estimate of the surrounding population penetrated by the wholesale trade of these various points; that is, the net penetration. There is, of course, a great deal of penetration in all trade. That is, Raleigh buys things from Charlotte and Charlotte from Raleigh and Richmond from Atlanta and Atlanta from Richmond; but the net penetration is the dominance of one community over the population. Now wherever the ratio of wholesale to retail trade exceeded the national average I took that to mean a net penetration by that city. Unfortunately the statistics of wholesale trade tell us where the trade

[R. 2894]

originates but does not give us its destination. The census does not inform us as to the points with which Charlotte, for example, trades. It simply informs us as to how much wholesale trade Charlotte carries on.

I am not attempting to make a statement concerning those points, but simply to estimate the surrounding population which, on balance, is penetrated. After allowing for wholesale trade to serve retail outlets in the city itself, I distributed the remainder on the assumption that half of all wholesale trade was purely local, even in the smaller places. That's arbitrary, but it was the best basis I could arrive at. On that basis I concluded that the net penetration was as given in the last column on the right.

On page 2 the total of those figures might have been included. It is 6,060,000; and the population of the nine focal points in Virginia and the Carolinas is 768,000. That leaves about a million and a quarter people in those three states to be served by wholesale houses located outside the area I am

studying. Baltimore, for instance; Cincinnati; perhaps others.

On Exhibit 21, page 1, the only thing to which I would call attention is that in postal receipts per capita all of the first six cities are capitals, either of the Federal Government, or of their states. I mentioned this because centers of government will generate more mail traffic and possibly more passenger traffic than their wholesale or their retail trade might indicate.

[R. 2895]

On Exhibit 22, page 1, manufacturing figures for Roanoke, Durham and Winston-Salem were not included because these were taken from the census. I believe that those cities have filed exhibits, however, and possibly some figures are given in the City exhibits.

Now, Mr. Sandridge, I come to the estimate that I made of volume of mail to be expected over the routes that Piedmont has laid out. As a basis of this estimate I used the experience of All American at 100 intermediate points. That is, not including the termini at Philadelphia, Pittsburgh and Harrisburg, and I plotted this on double logarithmic paper which gives us a rather confusing and apparently learned formula which I think I can explain very briefly as meaning this: There is a constant relationship percentage-wise between the growth in postal receipts and the growth in air mail and as a straight line sets these points better than any curve that could be fitted to them, and in this case it means that if the postal receipts of town A are twice the postal receipts of town B, then A can be expected, on the average, to produce 46% more air mail than B. Every time you double the postal receipts you get a 46% increase.

Q. In air mail? A. In air mail transported. That is the experience of All American.

Q. Now on page 2 of Exhibit 23, any particular dot on that exhibit represents a city on All American's Route 49? A. Yes, sir.

[R. 2896]

Q. The actual postal receipts of that city? A. Yes, sir. Exhibit 24 simply applies the relationship derived from All American's experience to the cities and towns on Piedmont's proposed lines.

Q. You are referring now to their pick-up lines? A. Yes, sir. Proposed pick-up lines.

• • • • • • • • • •

[R. 2897]

If you will turn now to Exhibit 55: In these exhibits I undertook to make an estimate of passengers to be carried over the five proposed lines of Piedmont Aviation on which they would carry passengers. There is also a mail estimate for these lines, made on the same basis as the mail estimate for the pick-up lines. Our method of estimating passengers was this: From a study that I made of the volume of traffic handled in November, 1939 by air from points having service in two directions only, it appeared that, typically, 668 persons

[R. 2898]

within a radius of 25 miles were required to produce one air passenger. Since the figures I am using here are populations for the cities proper, I reduced that figure to 500. Then I divided it by two, to allow for increase in air travel between November '39 and the first full year of operation of these routes, whatever that might be. That is rather conservative, I think. That gives us 250 persons per passenger.

I modified that in some cases. Where there are colleges located, for instance such as Lexington, Virginia, a student population is not included.

Or where there are resorts, that would likely bring in additional passengers. These modifications represent my judgment as to what should be added to it.

It is necessary, also, to modify them at the terminal points because that formula would show, for example, that Washington would supply more passengers to this route than you could possibly haul on the ships that are proposed to be used.

• • • • • • • • • •

A. Yes, sir. The average load factor may be changed to percentages as follows: Reading from left to right, 82, 88, 72, 73, 100. Manifestly, no one expects a load factor as high as 100, and perhaps 88 is higher than could be achieved. That figure simply means, so far as my estimates were concerned,

[R. 2899]

that route would produce more traffic than could be carried on the number of planes the Piedmont Aviation proposed to run. If my estimate was correct it means the number of schedules ought to be increased. It was arbitrarily cut back to the number of places in the planes.

I believe that's all I have to say, Mr. Sandridge.

* * * * * * * * * *

Cross Examination by Mr. Lyon:

Q. Dr. Brown, as I understand it you have no official position with Piedmont Aviation, either as an officer or director. A. No, sir.

Q. And you are just employed as an economist for the purpose of preparing these exhibits. A. Yes, sir.

Q. Did you have anything to do with the selection of the routes that are proposed by Piedmont Aviation? A. I had this to do: That I prepared a preliminary analysis, a major part of which is included as an exhibit; number 16; and along with it made certain suggestions to Mr. Davis, following which he revised his application, but I do not believe he followed all the sugggestions that I—I am sure he did not follow all the suggestions that I made. He did, however, revise them.

Q. Turn to Exhibit 16, page 4, doctor. What is the significance of the ratio of the wholesale to the retail trade of

[R. 2900]

those various cities? A. The significance is this: That since the national ratio is 1.3, it seems fair to me to assume that any city with a higher ratio than that was serving a considerable surrounding territory on net balance rather than being served from other centers. It would take 1.3 to serve its local retail outlets.

Q. And in your opinion any city which has a higher ratio than that, that would indicate it would have a higher traffic potential for air mail, or air traffic in general? A. Yes, sir; I think it would, because wholesale trade is less of a purely local affair then retail trade. Most retail trade takes place right within the city and until you get to be a rather large city, people don't go very far for retail trade.

Q. I notice there on Exhibit 16, page 4, you have lumped the cities of Greensboro and Winston-Salem together as one trade area. Do you regard them as one single trade area, or not? A. I think they can be so regarded. They are what I call a double center. You will note, too, I linked Lynchburg and Roanoke, despite the fact they are about twice as far apart as Winston-Salem and Greensboro. I have also grouped Greenville-Spartanburg. The characteristics of cities so located is that relatively little local traffic passes through one of hem in order to reach the other. In that sense they can be regarded as a single center, but only in that sense.

Q. From your study of the economic characteristics of

[R. 2901]

those two cities, Greensboro and Winston-Salem, do you have any comment to make regarding your opinion as to the relative necessity of air service to those cities? A. I think the two are approximately equal in importance. Winston-Salem has more manufacturing, although Greensboro does not show up poorly in that respect.

Winston-Salem also has more financial activity but postal receipts of Greensboro are slightly larger and Greensboro wholesale trade is somewhat larger.

Greensboro faces towards the east and the northeast, in its trade relationships. Winston-Salem faces towards the west and northwest, and each largely insulates the other from local traffic on the other side.

Q. From your anaylsis of the passenger traffic by rail in 1933 between the pairs of focal points in the southeast area, as shown in your exhibit PI-52, would you say that the economic characteristics and community of interest of Greens-

boro is or is not greater than any of Winston-Salem with the various cities with which you have compared it in that exhibit? A. I don't think these figures can be used to answer that question. Greensboro enjoys much superior rail service, and these are rail figures. These simply show where people moved; the routes over which one can move. It does not indicate the extent by which people moved by other means of transportation where there are no good rail connections.

Q. In other words, your opinion is that if these figures actually show a larger travel between Greensboro and High [R. 2902]

Point and the various cities listed here, it has no particular significance so far as air traffic is concerned; is that correct? A. I think I would agree with that. I should like to state it this way: That these rail figures ought to be supplemented by figures for bus transportation and figures for movement by private automobile, to determine the relative importance of the two points. These are not conclusive, in other words.

Q. I notice that under the proposed routes of Piedmont Aviation that they do not propose to serve Greensboro at all, but they do propose to serve Winston-Salem. Do you have any comment to make with regard to that, as far as public convenience and necessity is concerned?

Examiner Newmann: I think the doctor covered that on direct testimony, did you not, doctor?

The Witness: I am not sure whether I spoke to the point, but I think that Greensboro is proposed to be served.

By Mr. Lyon:

Q. It is on the mail pick-up, but not on the passenger—— A. You are referring to the passengers.

Q. Yes. I am referring to the passenger operation. Do you have any comment to make on that, doctor? A. That's Route 1, is it?

Q. Yes. You might refer to PI-49, giving the proposed routes of Piedmont Aviation which are in black.

Examiner Newmann: Your question is directed to the passenger proposal.

[R. 2903]

Mr. Lyon: Yes. Just the passenger proposal.

The Witness: I am sorry. I misunderstood.

By Mr. Lyon:

Q. That's all right. A. I see no reason why Greensboro, as well as Winston-Salem, might not be served on that route.

Mr. Sandridge: You are referring to Route 1?

The Witness: Yes, sir.

Mr. Sandridge: That is the route between Winston-Salem and Washington.

The Witness: Yes, sir. According to developed traffic channels at the present time, Winston-Salem has more traffic with Roanoke and with points in the valley of Virginia, than does Greensboro but that does not mean that Greensboro would not develop such traffic if facilities were provided for it. You simply have a difficult problem, where you have two important points located as close together as these two are, and I do not believe there is any completely adequate solution of that difficulty, but I see no overwhelming objection to adding Greensboro to this route.

Q. (By Mr. Lyon): I presume that the reason for the selection of Winston-Salem is primarily the fact that Piedmont Aviation is located in that city. A. Mr. Davis could answer that.

Q. Will you refer to Exhibit 17, page 2, doctor? Did you mean to state that there was no rail service between Charleston, West Virginia and Lynchburg, Virginia? A. You mean when I asked for that change to be made?

[R. 2904]

Q. That's right. A. I did not have that in mind. This map shows principal rail connections, not all rail connec-

tions. It includes no lines on which there are fewer than three trains per day. It is possible to move by rail from Charleston by Lynchburg—from Charleston to Lynchburg. Best way, probably, is to go from Charleston to Charlottesville, and double back, although the Chesapeake does operate a line from Clifton Forge down to Lynchburg; most freight, but I believe there are two passenger trains a day over it.

Q. Do you have any comments to make relative to the fact there are so few rail lines east and west across the state of North Carolina shown in Exhibit 17?

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A. The geographic factors affecting this problem are largely those of the nature of that mountain range. The highest part of the Appalachian mountain range is in the south and there are no streams that break through from the west to form convenient routes for land transportation.

The states of North Carolina and South Carolina spent large sums of money trying to build railroads across the mountains. Down at Clemson College they are now making cheese in the tunnel of one of them. They were never able to build but one line across there and that was by way of

[R. 2905]

Asheville over to Knoxville. I am excepting the line that slants down from Lynchburg in a southwest direction. I am speaking of lines that run at right angles and head toward the Ohio River. This one line built across there fell into the hands of a company interested in north-south transportation. It is a very important segment of that railroad system, to this day, but the trend of traffic is not east-west.

It is true that that line, although a single track line, handles more freight traffic than a double track line of the Southern handles between Charlotte and Atlanta but all that traffic stops in the Piedmont Carolinas. It doesn't go on to the coast.

Passenger traffic is very inferior through there. The route is circuitous, slow, and schedules are infrequent, with the

result that this whole region cannot pass into the middle-west with any ease except by going to Washington and making an acute angle, or going to Atlanta and making another acute angle.

I don't know how far you care to have me go on with this.

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Mr. Hill: May I ask Dr. Brown one question, there? Historically doesn't it show north-south transportation lines are not interested in developing east-west channels, as a rule?

The Witness: I think as a rule that would apply gen- [R. 2906]

erally to any transportation system. If it has a main interest in one direction it is not going to cross itself with other lines.

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[R. 2908]

Cross Examination (Cont'd.) by Mr. Russell:

Q. Dr. Brown, will you look at your Exhibit 49? I note that your company, or Piedmont Aviation's longest route proposed is a north-south route from Washington to Columbia.

Mr. Sandridge: No. Winston-Salem.

By Mr. Russell:

Q. Washington-Winston-Salem, and thence to Columbia. Would you say that that north-south operation would present any difficulties in the provision of east-west service by Piedmont Aviation between Wilmington and Knoxville? A. I don't know what you mean by present difficulties. Do you mean that the same company couldn't operate both of them?

Q. That's the question. A. I do not see why they couldn't, as local lines.

Q. Your statement a moment ago that a north-south transportation system could not engage in east-west operations to public advantage would have to be modified in the case of air transportation; is that correct? A. I don't believe I stated it just the way you did. I said that transverse lines ordinarily would not have an interest in developing channels of traffic at right angles to their main interest. It seems to me that a local line is interested principally in picking up passengers at small way-stations and deliver them into the focal points of the area where they could transact business or perhaps board a plane on a trunk line carrier and go

[R. 2909]

wherever they wanted. Transverse traffic can develop and be developed by a carrier on a feeder basis and a great deal of it is so developed. I think that would be the situation here.

Q. If Piedmont could do it, any other carrier could do it, couldn't they? A. Could do what?

Q. Could develop traffic on a transverse crossing. A. Feeder traffic from small points into focal points.

Q. You would make a distinction between local and long haul. A. Yes, sir. I think if I may revert to the railroad illustration that I used. I pointed out that the railroad line from Asheville to Salisbury handles a heavy volume of traffic, heavier than a double track main line into Atlanta, but even so the Southern is not interested in developing cross-mountain traffic, except as feeders to its main interest, which is north-south.

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[R. 2911]

Q. In regard to your Exhibit 52 I note that you have included traffic between Columbia and Atlanta, for example. Does that have any significance in consideration of Piedmont's proposed passenger service? A. No, sir; I believe it does not.

Q. And the same might be said for Wilmington-Norfolk? A. Yes, sir.

Q. Winston-Salem-Norfolk? A. Yes, sir. These figures were not intended simply to cover the points that Piedmont proposes to cover with passenger service.

Q. And on the succeeding pages you have shown traffic between Charlotte and Atlanta, for example. Is it your understanding that Piedmont Aviation proposes to serve such

[R. 2912]

traffic? A. They propose to run no passenger line into Atlanta from Charlotte. There are no passenger routes south of Columbia, or west, in the direction of Atlanta.

Q. This exhibit is not intended to indicate some undisclosed—as yet undisclosed ambitions of Piedmont Aviation? A. No, sir. Nothing that I have done is intended to disclose the ambitions of anyone.

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[R. 2915]

Q. How did you arrive at the average length of journey of a passenger? A. That's an estimate.

Q. Does it bear some relation to the length of the route? A. Yes, sir.

Q. What is that relationship? A. It is not a constant relationship but somewhat less than half, I believe, in each instance.

Q. Could you tell me what you consider a typical journey, say on Route 1, Winston-Salem; passenger originating at Winston-Salem? A. You mean, how far they would go?

Q. Of those 212 passengers, to what point would the greatest number go? A. I suspect the greatest number at any single point would be to Roanoke.

Q. What would be the next point? A. I am afraid I can't list these in order.

Q. How about Washington? Can you tell me for Washington? A. I think some would go through to Washington,

[R. 9216]

but it's a rather round about route.

Q. I was thinking of the passengers originating at Washington. A. I beg your pardon. Where would they go? I think they would get off at all those points down through the valley of Virginia. I can't say how many at each stop.

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Cross Examination (Cont'd.) by Mr. Mills:

Q. Dr. Brown, in your direct testimony, when you were speaking of Winston-Salem and Greensboro, am I correct that you stated that the interests of Winston-Salem were primarily to the west and northwest? A. No, sir. I said that so far as local traffic into these centers is concerned, Winston-Salem's local traffic comes mostly from the towns lying to the west and northwest of it, whereas Greensboro comes mostly from the other direction.

[R. 2917]

Q. Well, is that borne out by Exhibit PI-52, page 1? A. No, sir. That is not borne out because there aren't any adequate rail services from Winston-Salem.

Q. There is a rail service to Asheville on through to Knoxville, is there not? A. Not very direct, and one schedule a day.

Q. Rail service north to Roanoke? A. I was thinking of the area lying west of the line from Roanoke to Winston-Salem, say, including northwestern North Carolina, but not over as far as Asheville. Points like Elkin, Mt. Airy, North Wilkesboro, which are in the natural trade area of Winston.

Q. If what you say is true, I take it you would not then expect much traffic south of Winston-Salem on this applicant's proposed route that runs from Roanoke down to Columbia? A. I believe we are talking about different things. I was speaking about the local traffic that would find Winston-Salem as its natural trade center. Asheville does not find Winston-Salem as its natural trade center, although there may be a good deal of travel between those two trade centers, but each has an area around it that can be spoken of as its own trade center.

Q. You would say, if I understand you then, that there would be local travel from the south of Winston-Salem to Winston-Salem? A. There would be travel from—I don't know what local means, in the sense you are using it.

Q. You used the expression. I am using it as you did.

[R. 2918]

A. I am using local, right now, to mean travel from points that find Winston-Salem to be their natural trade center. There are some of those to the south but not so many as farther west; that is, immediately west of Winston.

Q. You think a local route, then, running into Winston-Salem from the west would be more apt to produce more traffic than one running into it from the south? A. No. I think it will pick up the traffic of the points that find Winston-Salem as their natural trade area but there is traffic that moves from Elkins to North Wilkesboro to Raleigh. That might be local in a sense but it passes beyond the immediate small, local trade area center in which Winston-Salem is the focal point.

Perhaps that doesn't answer your question.

* * * * * * * * * *

Q. Well, now, did you, in computing the amount of mail to be developed by the mail, passenger and express service take into account the fact that many of the towns on those routes are also served by the pick-up routes? A. No, sir.

[R. 2919]

They are separately figure.

Q. Well, will you explain that a little further? A. I simply figured the passenger and mail routes as if they were a system, without regard to the pick-up groups, and I figured the pick-up groups as if they were a system.

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[R. 2920]

Q. In other words, you made no allowance for the fact many of these towns are served by both your pick-up and your

mail-passenger-express routes. In other words, you included the whole amount of the estimate. A. I included them separately. I didn't assume both would be operated. Mr. Davis could speak on that point better than I can. If he should be so fortunate to secure certificates of air mail pick-up through the valley of Virginia, and a passenger air line through the valley of Virginia, he will have to decide how to operate it. I did not assume both would be operated.

Q. Did the fact, possibly, your pick-up route came into the town from one direction and your mail, passenger and express came in from another direction, have anything to do with your including the same figure twice? A. It would have something to do with it, but it would not justify doubling the figure.

Q. It is true in several instances the pickup route and mail, passenger and express routes practically duplicate each other? A. Yes, sir.

Q. That would be true in the Columbia-Charlotte group where the common stops are not only those terminals but Camden, Lancaster, Chester and Rock Hill; is that correct? [R. 2921]

A. Yes, sir.

Q. So that your estimate would have to be very considerably revised if you were working it up on the theory both the passenger, mail and express, and pick-up routes, were awarded this applicant; is that not true? A. And were going to be operated over substantially the same points, which is the case; yes, sir.

Q. In other words, your estimate is on the theory that all the mail will go to the pick-up and that will be the only service operated, or in the case of the mail, passenger and express, that will be the only service operated; is that correct? A. That's right. I did not eliminate those duplications.

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Cross Examination (Cont'd.) by Mr. Hill:

Q. Dr. Brown, on your Exhibit 24-A you made some deductions for overlapping of routes. How did you arrive at

those? A. I arrived at it on the basis of the number of routes serving these particular points; the directions in which they propose to serve them, and the relative importance of the centers with which they propose to connect them. If two routes, for instance, going into the same point both went out in directions that were important from the viewpoint of that city, I made a relatively small deduction.

[R. 2922]

Q. What I had in mind was, really: You had no mathematical formula for doing this? A. No, sir; that's judgment.

Q. It is a judgment figure. A. Yes, sir.

Q. On your Exhibit 55, if I understand it, you have made your computations on the basis of four passengers per 1,000 of population; is that correct; throughout the exhibit? A. That was the basis, but it was modified.

Q. Modified as you stated. A. Yes, sir.

Q. Let me ask you this: Isn't it an accepted fact that the smaller cities, let's say those under 10,000 of population, do produce a far greater number of passengers per 1,000 of population than do the large cities of 50,000 to 100,000, and up? A. I think undoubtedly that's a fact, and in that regard these exhibits are very conservative. The larger a city is, the more self-sufficient it is, in the viewpoint of its economic activity. It is not necessary to go to the next town to buy something, if you live in New York.

Q. As I understood your opening statement, you analyze the problem as being in its second phase at this time, the first phase following established surface traffic channels, and that followed by the airlines. That's correct, isn't it? A. I don't believe I said we were in the phase. I said this matter pertained to the second phase, whenever that begins,

[R. 2923]

or has begun.

Q. The second phase: that is the service of hereto neglected smaller cities, or less well-served, smaller cities, is the one with which we are here dealing. A. Yes, sir.

Q. Have you given any thought to the problem as to whether that particular problem could be better solved by a new company which would concentrate on that problem alone, than by a company whose interests are already established along other channels? A. You are speaking of the second phase? Local——

Q. Yes, sir. A. (Continuing) ——transportation system?

Q. Yes, sir. A. My judgment is that, in general, problems, can be solved better by parties who do not undertake to solve too many diverse problems.

Q. And you have found, from your years of study of the problem, that that is confirmed by history; have you not? A. Yes, sir; I think I have.

Mr. Hill: That's all, thank you.

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[R. 2924]

THOMAS H. DAVIS was called as a witness on behalf of

[R. 2925]

Piedmont Aviation, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Sandridge:

Q. Will you state your name, Mr. Davis? A. Thomas H. Davis, Winston-Salem, North Carolina.

Q. Are your qualifications correctly stated in PI Exhibit 1? A. Yes, sir; they are.

Q. Is there any correction or addition to be made to that? A. Nothing except possibly since the preparation of this exhibit I have been appointed to the North Carolina State Aeronautics Commission by the Governor of North Carolina.

Q. Where are the offices of Piedmont Aviation, Incorporated? A. The principal offices of Piedmont Aviation, Inc. are located in the Terminal Building, at Smith Reynolds Airport, Winston-Salem.

Q. When was the corporation formed? A. Piedmont was incorporated in July of 1940, as a North Carolina corporation.

Q. Does your charter provide for the operation of air lines? A. Yes, sir; it does. I may read that particular article.

Q. I don't think it is necessary to read it, unless you [R. 2926] particularly care to. A. All right, sir. There is a change to be made in the charter of the corporation at such time as the directors see fit. The present authorized capital stock is now, presently, $100,000, and naturally if we were fortunate in receiving a certificate from the Civil Aeronautics Board, that particular section of our charter must be increased, which is a minor item.

Q. How long has Piedmont Aviation considered the establishment of mail pick-up routes and mail, passenger and express routes in the southeastern region of the United States? A. We have given this matter considerable thought since the organization of the company. As I have stated, it is provided in our charter that we will be permitted to operate airline service for passengers, mail and cargo, and right after the incorporation of the company, or at the incorporation of the company, we obtained franchises from two public manufacturers of aircraft as state distributors for those factories and the principal activity of the company as explained in Exhibit PI-4 was aircraft sales. We feel that we have done a fair job in that capacity, in view of the fact in one year alone we sold over 100 aircraft within the state, totaling more than all the other one—or all the other makes combined sold within the state.

Of course from there, or shortly after that time, everything was converted to the war effort and we, in the meantime, had continued stressing our training facilities, had obtained government approved primary and advanced flying school ratings, in addition to licensed repair and overhaul station [R. 2927] by the CAA.

With the war effort on, our thoughts continued along the lines of scheduled air transportation but our efforts were directed 100% to the prosecution of contracts which were

awarded to us by the Federal Government for the training of pilots.

In 1941 we were chosen as one of the then 14 Type A training centers, CAA designated training centers in the United States, under which contract we trained pilots to become polished, advanced instructors. They came to our school after having received their primary training at other schools. We took them through secondary cross-country and instructor courses. They were assigned to Army schools and other places where instructors were needed so badly at that time.

Further along with that we—I don't know whether I should say were fortunate or unfortunate enough to have the Inter-American, Central and South American students assigned to our school for flight training and it turned out to be ground school training, not only in aeronautics and aeronautical subjects, but also in English. We understood they were to be sent to us as having a fair knowledge of the English language, but we went ahead and inaugurated our own English classes, fortunately having a ground school instructor—two with previous college experience, one who could speak the Portugese and the Spanish language very fluently. Those students, most of whom had never been up in an airplane, were taken through the course and sent back to their countries as instructors in their respective Air Forces.

[R. 2928]

After the completion of that, as outlined here, we engaged principally in cross-country training for Army Service pilots in which course they obtained training in all types of cross-country flying, the navigational aids, radio, orientation and, in addition, night flying. I would like to point out, in that respect, as well as some of these previous courses, that our staff of some 25-odd instructors, during those courses, as you understand, flew over the territory, for which we have proposed service, day in and day out and obtained a valuable amount of experience, a tremendous amount of experience in the characteristics of this particular territory which, as I think everyone will agree, is a tremendous asset to a pilot flying on scheduled operations or any other type of operations.

In addition to that training we have done a considerable amount of charter work. As specified in PI-4, there were 41,874 miles of charter flown by Piedmont Aviation, Incorporated in 1944 and thus far this year, the first five months of 1945 there was a little over 26,000 miles of charter flying, both night, day, instrument and what have you.

Other than that, Mr. Sandridge, I don't believe I have any comments on that particular section.

Q. What exhibits do you sponsor, Mr. Davis? A. Exhibits PI-1 through -15, inclusive; PI-25 through -50, inclusive; -56 through -90, inclusive.

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[R. 2929]

Q. Mr. Davis, what has been your own personal experience in the aeronautic field? A. Well, it's outlined fairly well in the qualifications of witnesses. I might add that either me or one of our pilots has flown into or over every point listed on our proposed routes several times and quite a number of those flights with scheduled operation in mind.

Q. Now will you come to the various exhibits which you sponsor and taking them in order, as far as practical, state the purpose of the exhibits and make any comments that you care to make about them. A. I don't believe I have a great number of comments, Mr. Sandridge. There is one addition that might logically be added on PI-5. Recently our superintendent of aircraft, overhaul and chief inspector was appointed an official CAA aircraft inspection representative, which will permit him to license and re-license aircraft without having CAA representatives on the field. In other words, he would act in the capacity of a CAA representative, as far as the licensing of aircraft is concerned.

PI-6 is an outline of our proposed method of arranging

[R. 2930]

for the necessary capital. You will notice that we anticipate the sale of stock and we have an exhibit, page 2 of PI-6

which will be sponsored by another witness indicating the position of a bank from whom we intend to borrow money on our equipment, and by the use of the present assets of the company.

I may elaborate a little, here: Firstly, on the sale of stock——

Q. Excuse me one minute, Mr. Davis. A. Yes, sir.

Q. I think you said that you proposed to borrow on the present assets of the company? A. No, sir. You misunderstood me. That is in addition.

Q. That's a third method. A. That's a third method of availability of funds. I am sorry.

We anticipate no difficulty whatsoever in obtaining the required capital by the sale of stock. We feel that an underwriting concern is not necessary. It is the plan of our corporation, Piedmont Aviation, to sell stock to individuals within the area which we propose to serve, rather than to have it floated, so to speak, by an underwriting concern, because such an arrangement as that is undoubtedly unnecessarily expensive to either the company or the purchaser of the stock.

We had considered an underwriting concern agreement and every one that we have seen so far contained qualifications and conditions which rendered the agreement, in our

[R. 2931]

opinion, legally unenforceable against the underwriter, and to sum it up, our decision to sell the stock ourselves and our firm conviction that there will be no difficulty, has been vindicated by results obtained within the past several days by a comparatively small group—a very small group of prominent citizens in Winston-Salem subscribing to over a hundred thousand dollars within the past few days.

Now as I have mentioned, Mr. Leinbach, another witness, will sponsor PI-6, page 2.

The Witness: Mr. Examiner, I have a comparative balance sheet of the corporation since its beginning.

If you would like, we can submit this for identification, showing the surplus of the company, the assets, totaling some $60,000.

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[R. 2933]

Q. Mr. Davis, going back a minute: You referred, I think, to about 23 instructors in your various programs. A. There were some 25, off and on.

Q. Have you received any communications from those instructors with regard to their postwar plans with you? A. Very definitely; yes, sir. As pointed out in the exhibits, not only those instructors but students who have graduated from our school who are now in the armed services, principally with the Air Transport Command, or with scheduled air carriers, have requested reemployment.

PI-8 and -9 are for the purpose of showing some of the detail of the operation of our cross-country training programs and the similarity of information contained therein with that prepared on flight plans and logs and maintenance records of scheduled air carriers is quite noticeable.

I would like to clarify that this proposal is basically two distinct operations; that being air mail pick-up operation over various routes, and purely local air service over other routes, some of which are quite similar to the proposed pick-up operations.

Our preparation, or our planning, has been greatly assisted by the cooperation of All American Aviation, who have extended me personally the courtesy of flying over their route and making detail studies of their operation and in addition to that, various other methods of study.

Our passenger proposal is, as shown, a purely local service. We don't consider it any more of a feeder service than the trunk lines would feed to us, and that is our purpose in establishing such a system. We feel there is a definite

[R. 2934]

need for it and that is the type of operation we plan to

operate, and develop, from that point into an expanded system probably of local service, but no trunk line operation of any kind.

Q. Now proceed with the various exhibits, please, sir; making any comments that are necessary. A. PI-14 shows the schedules and diagrams illustrating the utilization of equipment, probably more than anything else, and your actual schedules of times begins on page 5 of PI-14 for the pick-up operation.

PI-47 is the same information for the schedules passenger, mail and express operations.

We have prepared our financial estimates on the passenger operation—operational estimates—on the basis of operations costs of the Noorduyn Norseman. While this is a single-engine aircraft, we have adhered to the policy that a local air service, to prove its worth, must of necessity be operated at a minimum of expense, but not to the minimum where safety and service performed is neglected. As outlined in PI-50, this particular airplane is quite adaptable to operation in and out of small fields. We do not feel that it is the ideal and I would like to have it understood we prefer twin-engine equipment, but we do not feel that twin-engine equipment is available for passenger operation of a local nature in which frequency of service is a vital factor. Such ship is not presently available, whereby the required mail pay would not be to such an extent that it can be referred to as direct subsidy. We feel that by the combination of the

[R. 2935]

passenger operation with the mail pick-up operation a substantial savings can be effected, which is pointed out through Exhibits PI-78 through -90, and we have adhered to the economical phase of operation throughout.

As I have mentioned, the Noorduyn is a single-engine airplane, but it has not been too long since single-engine airplanes were operated on scheduled air operation and there is no regulation today to prohibit single-engine operation over the land during day, with day contact operations.

Q. Mr. Davis, do you propose combining the pick-up of mail in the same plane and at the same time with the pick-up of passengers? A. In this particular application?

Q. In this application. A. No, sir. It is an entirely distinct operation. A different type airplane will be used for mail pick-up operation and passengers will not be carried on those aircraft. While we do feel, with further development of this type of operation, it is entirely plausible and feasible and at such time that it has proven safe and feasible operation, undoubtedly we would apply to haul passengers over the pick-up routes.

Q. Do you have any—I think it might be helpful to separate the pick-up part of your testimony from the mail, passenger and express. Referring, now, to the mail pick-up proposal, do you have any explanation or comments to make about the exhibits relating to that, which you have not al-

[R. 2936]

ready made? A. I believe not, Mr. Sandridge.

Q. All right, sir. Coming then to the mail, passenger and express proposal, have you any additional comments to make with respect to that? A. No, sir.

Q. Do you have any undisclosed intentions with respect to extending your mail, passenger and express routes to Atlanta? A. No, sir.

Q. About which Dr. Brown was questioned? A. Other than as I mentioned, if at such time as the Board should see fit to certificate a combination service in which the passengers rode on the same airplane that picked up mail by the pick-up device. Our pick-up routes do go into Atlanta and we would probably haul passengers on those routes if they were so certificated but there, again, it is purely a local service and would serve the intermediate points more than the terminal and there would be—or we would expect mighty little terminal-to-terminal traffic.

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[R. 2937]

Cross Examination by Mr. Lyon:

Q. Mr. Davis, will you turn to Exhibit PI-2 and tell me

Frank Groat, who are listed there as directors of the company? A. Mr. L. S. McGinnis was associated with Piedmont Aviation up until I believe it was January, 1944, at which time he was associated with the Consolidated Vultee Aircraft Corporation in San Diego and he is presently flying for Bendix Corporation at Teterboro, New Jersey.

Q. And what share will he have in the operations of Piedmont Aviation, in case it is awarded a certificate in this case? A. There have been no definite decisions made in that regard.

Q. He is not working for the company at the present time? A. No, sir. Shall I continue?

Q. Yes, please. A. Mr. Egbert L. Davis, Jr. is vice-president and secretary of Atlas Supply Company, a wholesale

[R. 2938]

plumbing and heating supply organization in Winston-Salem. Mr. James Frank Groat is vice-president of Piedmont Aviation and serves as chief pilot of Piedmont.

Q. You have a total of $30,000 worth of stock outstanding at the present time; is that correct? A. Yes, sir.

Q. Consisting of 3,000 shares of $10-par value? A. Yes, sir.

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[R. 2940]

Q. What airplanes have you been using for your charter operation? A. Stinson Reliants.

Q. And you do not feel they are suitable for the schedule proposed in this case? A. No, sir; I do not believe so, in view of the fact of the limited capacity of the airplane and the operations cost. For a scheduled operation over a local route you need an airplane with more than three available seats for passengers. We will put it that way.

Q. Mr. Davis, in your PI-91 you have an item there entitled "Accrued Liabilities—$33,947.21." Can you tell us what that consists of? A. Principally taxes, I expect. Taxes, accounts payable—no, the accounts payable are listed above.

Q. As I understand it during recent months you have eliminated your notes payable entirely and have no notes

payable at all, is that right; at the present time? A. No, sir. We have recently—however, before this comparative balance sheet was prepared—I beg your pardon, after this compara

[R. 2941]

tive balance sheet was prepared, a note of $10,000.

Q. That is subsequent to December 31, 1944? A. That is correct.

Q. You have no mortgages payable, however. A. No, sir.

Q. What do your fixed assets of planes, building and equipment consist of, Mr. Davis? A. A varying number of airplanes; shop equipment; some buildings which we ourselves have built on the premises.

Q. You are referring to your base at Winston-Salem, North Carolina; is that right? A. Yes, sir.

Q. What is the $9,000 deposit with the Treasury Department—what does it consist of? A. That is a deposit required by the Treasury Department in order to establish a replacement fund.

Q. Replacement of what? A. Replacement of aircraft which the Government purchased from us.

Q. And you have a reserve of some $26,000 for that purpose; is that correct? A. Yes, sir.

Q. Where have you had the most demand for charter flights during your experience in this community? A. It is quite varied. We have—I don't know that I could point out any one particular place that was used more than any other. Washington, Atlanta, Miami, Cincinnati, Chicago, New York, Raleigh, Charlotte, Salisbury, Burlington; once in a while to Greensboro.

[R. 2942]

Q. What is the average length of those charter flights? A. I am sorry, Mr. Lyon, I couldn't give you that information.

Q. Did you base your proposed routes in any respect upon your experience of the wants or needs of the community for air service, as shown by your experience with

charter service? A. No, sir; we do not feel that a basis can be arrived at for determining the number of passengers or the needs of a community by their use of charter operations, in most cases. However, there are exceptions to that. Charter operations are at the present time, shall we classify them as entirely emergency operations. I think you see what I mean.

Q. Yes. Now referring to P1-6, Mr. Davis, is it correct that you are planning to raise $1,100,000 total capital, which will include the $30,000 which you have now outstanding; is that correct? A. Yes, sir; you are right.

Q. Your $700,000, other than of—well, the $700,000 worth of stock will include the $30,000 which you now have outstanding. A. Wait a minute. I don't believe I understood your question correctly. The present $30,000 outstanding is to be included in our estimate of 70,000 shares to be sold?

Q. That's right. A. No, sir.

[R. 2943]

Q. Your total capital, as you contemplate it, will be $700,000; is that correct? A. That is the total capital required to operate the proposed operation.

Q. And in addition to that you will get $400,000 by these equipment trust certificates which you plan to borrow from the Wachovia Bank; is that correct? A. Yes, sir.

Q. Did I understand correctly on direct examination $100,000 of stock in your company had been subscribed locally in the past few days? A. Yes, sir.

Q. By what individuals was that subscribed? A. By a small group of prominent citizens: Mr. Clay Williams, Chairman of the Board, Reynolds Tobacco Company; Commander Thurmond Chatham, in the Navy, Chairman of the Board of Chatham Manufacturing Company; R. M. Hanes, President of the Wachovia Bank & Trust Company; Mr. E. L. Davis, President and Treasurer of the Security Life & Trust Company; and Mr. E. L. Davis, Jr.; Mr. R. B. Crawford, Haynes Hosiery; Mr. William Conrad, Secretary and Director of Reynolds Tobacco Company. Those are all I recall, off-hand

Q. In what form were those subscriptions written, or otherwise? A. Written form. The standard—more or less standard stock subscription agreement.

Q. And in your opinion are the people who have signed those subscription agreements able and willing to fulfill

[R. 2944]

them in case a certificate is awarded to your company? A. Oh, yes, sir. I believe Mr. Leinbach will probably go into that a little further. I don't believe there is much doubt about the ability of some of those I have named. Mr. Leinbach can give you probably more information, since he is connected with the bank there, and not only that, several of these have expressed a desire or willingness to invest considerably more.

I might add that we have not contacted quite a number of the parties whom we are positive are anxious to subscribe to stock in the proposed operation.

Q. What is your plan of organization, Mr. Davis, in case you are awarded a certificate? Do you propose to manage the company as General Manager? A. Yes, sir. President, probably.

Q. And be in complete charge? A. I presume.

Q. And who will be under your personal direction, in charge of the various divisions of the company? A. Mr. Groat would possibly be in charge of flight operations. Mr. Fare, present member of the company, would act in the capacity of secretary or comptroller. As far as traffic personnel is concerned, we have not made any definite commitments with any one particular person. Several of the former employees whom I spoke of a while ago are now in Air Transport Command, or with scheduled air carrier operations, we feel will have more than sufficient knowledge to handle the traffic position. Mr. F. H. Ponish, who is presently Chief of Ground Operations for the company, will probably

[R. 2945]

serve as superintendent of maintenance.

Q. Will you have a separate organization for your pick-up service, and another one for your mail, passenger and express service? A. No, sir.

Q. How do you propose to integrate those two services, Mr. Davis, as shown by your exhibits? As I understand it, you are proposing to fly separate routes for each of those operations; is that correct? A. No, sir. That can be shown in PI-15 and PI-49. The routes in some cases are quite similar. However, in all cases the pick-up routes have a considerably larger number of intermediate points. Route I on Exhibit PI-49 runs from Winston-Salem to Washington. That is practically identical with the exception of intermediate points to Route 9 on Exhibit PI-15 which runs from Winston-Salem to Washington on a mail pick-up operation.

Q. I am not quite sure I understand your proposal, here. You plan on combining these two operations as soon as a plane is developed which can carry passengers and pick-up mail at the same time. Is that your proposal? A. You mean the combined passengers and pick-up in one airplane?

Q. That's right. A. Yes, sir. At that time the routes over which passenger service would, we will say, be operating, under the present proposal, could be adequately served by pick-up operations.

Q. And at that time you will have to change your routes

[R. 2946]

as laid out in your exhibits, here, to make a sort of a combined route; isn't that correct? A. Yes, sir; to some extent.

Q. Will you turn to 77, please? How did you compute your load factor there? As I understand it, your planes are going to have 6-passenger capacity; is that correct? A. Yes, sir. Dr. Brown prepared these average load passenger capacity figures.

Q. Isn't it correct your Route 5 would have a hundred per cent—— A. That is correct, on the basis of Dr. Brown's study. We are aware of that condition. The seating capacity of the aircraft—of the aircraft set out in these exhibits, which would indicate 100% load factor. We contemplated the addition of another schedule, but again with economy in mind we did not see that there was enough of a load factor to warrant an additional schedule at the present time. So

we might assume that with our estimate of a load factor of 100%, that would be a pretty good run with the schedules that we have proposed, and that possibly in a short time additional schedules would be warranted.

Q. All of those load factors on your various routes, according to Exhibit PI-77, run between 70, 75%, and up as high as 100%. A. Yes, sir.

Q. Isn't it a fact that that would result in either inadequate service to the public, or showing that you have overestimated your potential passenger service? A. That is right. It would indicate that our proposal is not more than

[R. 2947]

what we feel, or what will be profitable. In other words, conservative operation.

Q. How many planes do you estimate you will need for those 5 passenger routes? A. Nine.

Q. Nine planes. A. Yes, sir. I believe that is correct.

Q. How do you plan to use them? What is your proposed plan of utilization?

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A. In answer to your question about the number of aircraft for the proposed passenger operation, we will require six. Exhibit PI-47, pages 1 through page 2, will show the utilization of those aircraft, with the exception of spares.

Q. That is, you propose to use one aircraft on each route, and an extra one as a spare, is that it? A. Routes 4 and 5 will be operated by one airplane.

Q. Referring to PI-31, Mr. Davis, upon what did you estimate your cost of operation? What basis did you use

[R. 2948]

for these estimates? A. Several different methods. On the operation of the aircraft we used our experience, and on other estimates we had to bank on All American's experience.

Q. This plane—— A. On aircraft haul—overhaul——

Q. This plan you propose to use is being operated by All American? A. Yes, sir.

Q. And did you get the figure from them, or what? A. Not the operations figure, because we had operated the same type airplane.

Q. Referring to passenger service, upon what did you base your estimates, costs of operating Noorduyn Norsemen 5? A. On cost relative to the maintenance of that particular airplane we used our previous experience and sort of a combination of what the factory estimates and what our experience has been with similar type aircraft and engines on the operational expense.

Q. Is that particular airplane now being operated anywhere? A. By the Army Air Forces, only.

Q. And did you get any figures from the Army Air Forces upon which you based these estimates? A. Yes, sir.

Q. Just one other question: Regarding this PI-48, are all of those proposed stops along these various routes, do they all have airports at the present time? A. No, sir.

[R. 2949]

Q. The five different routes you are proposing mail, passengers and express service. A. Not in every case; or at least not adequate for anything bigger than a Cub.

Q. What do you propose to do for those cities that do not have any airports? A. They are very few and it is anticipated by the time this particular operation could be put in effect, those little Cub fields will have grown some.

Q. And does PI-47, the exhibit showing the schedules, in your opinion do those schedules allow enough time for circling fields and landing and letting off passengers and taking on new passengers? A. Yes, sir.

Q. Have you actually flown all those routes yourself, Mr. Davis? A. Yes, sir.

Q. And you have estimated those times? A. I might add there, Mr. Lyon, our speed estimates take those factors into consideration; landing and taking off. Our speed estimates are reduced considerably from manufacturer's specifications.

Q. But you haven't shown your arrival and leaving times. Did you take that into consideration in your schedules? How

much time did you allow for stopping at each of those points? A. I see what you mean. No, sir. There is five minutes that is allowed for each stop that is not shown here. In other words, we left out the arrival time and departure time and

[R. 2950]

there was five minutes included, here, or shown as flight time, which is actually ground time.

Q. Just one other question: PI-40, page 1. I note you are proposing to write off 10% a year on development costs of some $36,000. What did those development costs include? A. Extension and development?

Q. Yes. A. That's $3627, isn't it, on PI-40

Q. That is the 10% of the total amount, as I understand it. You are proposing to deduct that; write it off, I assume. A. Yes, sir.

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A. That is expenses incurred principally in familiarization flights which are required by the Civil Aeronautics Board, and other miscellaneous expenses incurred in the preparation and prosecution of this case.

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[R. 2951]

CLARENCE T. LEINBACH was called as a witness on behalf of Piedmont Aviation, Inc. having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * * * * * * *

What is your business and your position, Mr. Leinbach? A. I am a banker of the Wachovia Bank and Trust Company, Winston-Salem, North Carolina.

Q. Has the Wachovia Bank at any time in the past extended financial assistance to the Piedmont Aviation? A. Yes, sir; we have made quite a number of loans to them on different occasions since 1941, probably was the first loan we made. We lent them $10,000 now.

Q. Will you state your experience with Piedmont Aviation, as regards credit? A. It has been entirely satisfactory. We have made loans to them with chattel mortgages on planes as collateral. That was a couple years ago. And at the same time were lending them without collateral and at the present time are lending them without collateral.

[R. 2952]

Q. Do you know the personnel of the management of the company? A. Yes, sir.

Q. How long have you know Mr. Tom Davis? A. Well, I have known him, I would say, all his life; ever since he and I have been big enough to know each other; and his family, too, as far as that is concerned.

Q. Mr. Leinbach, has Piedmont Aviation, or its management discussed with you means of financing their proposed operations? A. Yes, sir.

Q. With what result, and with what conclusions? A. Well, they indicated that the best estimate they could make at this time was, presuming that they would be granted the certificate of necessity, or whatever it is properly called, to operate both the pick-up mail, express service and passenger service over the territory requested, that it would probably would require a million, a hundred thousand dollars to purchase equipment and maintain the operations over that area, and it was suggested we thought it a very wise basis to figure on that they would sell stock up to a total of $700,000, and then borrow $400,000, which then would provide the amount of money which they estimate will be necessary. That was discussed by them with us some time ago, a month ago or so, and the situation was considered and analyzed by our credit department, which is our usual procedure in such cases. The matter was then presented to our loan committee and we agreed that we would lend the Piedmont Aviation up to $400,000, with a chattel mortgage on their planes, presumably 50 per cent of the value, or somewhere in that neighborhood.

[R. 2953]

The question was brought up as to the sale of stock. How it would be best to accomplish it, and as I think we all know, often some investment firm would go into the situation and make a commitment or agreement that they would undertake to sell up to some certain amount of stock.

However, in this case it seemed to all of us, considering the matter, that that would not be the best method, for several reasons. In the first place, it isn't only the question of just securing the actual cash needed, which probably could be done without any difficulty through some such investment firm, but they presumably would sell stock to whoever would be interested in buying. That's well enough, as far as raising the cash is concerned, but those of us that discussed it felt that it would be much more advantageous to the company and its future operations if local interested citizens in and around Winston-Salem would personally subscribe to the required amount of stock. That would tie in local interests from our leading citizens and who, in the vast majority, would be connected with firms and industries, manufacturing establishments that would be interested in using the

[R. 2954]

facilities and services of the Piedmont Aviation under this proposed plan, which would be, of course, quite a saving, to have that tie-in, and that, as I understand it, is the plan upon which the management is proceeding, as far as the sale of stock is concerned.

Q. Have you taken into consideration, Mr. Leinbach, in agreeing to extend $400,000 of credit, that Piermont's certificate may be only a temporary certificate for as little as a year; possibly three years? A. Yes, we have. I don't think that would make any difference, as far as that's concerned. I am under the impression that possibly any certificate that would be granted would be temporary and a permanent certificate would be granted later if the operation proved to be conducted on a satisfactory basis, but our commitment was not conditioned upon their receiving at this time a permanent certificate, but receiving a temporary certificate. I mean,

they would have to have the temporary certificate before they could operate.

Q. In the letter, which is identified as PI-6, written by the bank, signed by Mr. Webb, was that letter written pursuant to loan, or any action of the Wachovia Bank? A. That's right. It was written after our loan committee approved the granting of the loan I have just mentioned.

Q. What would be the position of your bank in the event Piedmont were not granted all of the routes applied for? A. Well, I would presume that proportionately they would

[R. 2954A]

not need the amount of money that they would need if they were granted the full permission to operate. In other words, if they were granted 50 per cent of the area, or 75 per cent of the area, presumably their financial needs would be 50 per cent or 75 per cent of the whole. That would not necessarily follow as an absolute percentage, no doubt, because it would be a question of the number of planes necessary to operate certain routes. I would not be familiar with that particular formula, but we would be willing to finance them up to some reasonable percentage based on that, even though the financial needs were a greater per cent than the actual mileage that they would operate under. I don't think that that would create any obstruction, at all, from the standpoint of the financing.

Q. Has Mr. Davis discussed with you and shown you the stock subscriptions which he has obtained? A. Yes, sir; he has.

Q. Do you yourself know the signatures of the parties whose names appear on that stock subscription? A. Practically all. There are one or two on there whose signatures I didn't know but the amount of stock they subscribed for was rather small. Maybe 500, a thousand dollars, or something of that type, but all of the others on there, I know who they are, I know their signatures, I know they are men of means and are able to fulfill the obligation, whatever it might be.

Q. Mr. Leinbach, have you an opinion as to whether or not Piedmont Aviation will be able to obtain the capital, needed capital, as indicated by the exhibit, without

[R. 2955]

resorting to an underwriting agreement? A. Yes, in my opinion they can. I don't know whether—I might mention some names that are on the list, there, if it would be in order, but Mr. E. L. Davis, Sr., of course, is the father of Mr. Tom Davis. Naturally he is interested in it. He is president of the Security Life and Trust Company at Winston-Salem, a very successful insurance company. He is a man of outstanding business ability and large personal means and fully able, in my opinion, to finance any obligation he would assume.

I would say the same thing as far as financial ability as to Mr. Tom Davis and Edbert Davis, Jr.

Mr. R. M. Hanes, president of the Wachovia Bank and Trust Company, has subscribed a considerable amount of stock and of course is a man of very large means. He would be able to take all the stock needed, if you would let him, as far as ability is concerned.

Mr. Clay Williams, chairman of the board of the R. G. Reynolds Tobacco Company, is a subscriber, a man of large means.

Another one is the Quality Oil Company, which is a partnership consisting of three gentlemen. I happen to know that some of their investments, as a matter of convenience to themselves, they handle through this partnership rather than each individual subscribing, and I presume that is the reason it is stated in that way.

Mr. Thurmond Chatham, I have seen a letter from him subscribing to a very substantial block of stock. As Mr. Davis said this morning, he is a Commander in the Navy at

[R. 2956]

present but is chairman of the board of Chatham Manufacturing Company, located at Elkin. He is a resident of Winston-Salem, and, of course, his business is one of the

outstanding successful ones in the whole South and he is fully able to meet whatever commitments he might make.

Mr. Fred Bonson, Jr., is subscribing. He is a large owner in the Southern Steel Stampings Company which, at the present, is engaged principally in war work but he is very much interested in aviation, an outstanding young man of considerable personal means and I think was one of the instructors when the Piedmont Aviation had the contract with the Navy—I believe it was for the training of young men for flying service.

Mr. R. B. Crawford has subscribed. He is connected with the Haynes Hosiery Mills Company, one of the largest hosiery mills in the South.

Mr. William J. Conrad, Jr., who is secretary of the Reynolds Tobacco Company. I might also mention Charles E. Norfleet has subscribed to a considerable amount of stock, a man of means and one of the trust officers of the Wachovia Bank and Trust Company. Mr. Norfleet is a man who has been interested in aviation for many years and is entitled, and has done more than any other one man in our community to build up aviation and our air field at Winston-Salem. He probably is known to some of you gentlemen, but he has worked untiringly for the development, for the improvement of the air field there, and has been able to interest a good number of our public-spirited citizens in making contributions to that end.

[R. 2957]

Our airfield at Winston-Salem was started—and I don't know how many years ago—by a donation of a considerable amount of land by Mr. R. E. Lassiter and Mr. A. C. Miller and it has grown from a small and modest beginning to what it is at present.

So that I can say, unhesitatingly, as far as the stock subscription goes, that these gentlemen can put up any amount of money that they subscribe to, in our opinion.

As far as our bank is concerned, we would be willing to lend every one anything they subscribe for, if they should

happen to want it, and I think that the other citizens in the community, in the lack of time Mr. Davis no doubt has not been able to contact or approach in reference to this project, who, in my opinion, would be interested in subscribing to stock, to the proposition.

Q. Is it your opinion that Mr. Davis could obtain subscriptions to the entire amount of capital stock proposed? A. Yes, sir; $700,000. I think he will be able to do that.

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Q. Mr. Leinbach, you mentioned having seen the stock subscription. It is a fact, is it not, Mr. Chatham's name

[R. 2958]

is not on the stock subscription? A. No, sir. He is in Washington at this time, located there, but I saw a letter from Mr. Chatham he has agreed to sign it, just the same as if he had signed on the regular subscription list, if that's what you call it.

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[R. 2959]

Cross Examination (Cont'd) by Mr. Lyon:

Q. Was your commitment; that is, the commitment of the Wachovia Bank and Trust Company, to loan the $400,000, contingent upon the raising of the $700,000 additional by stock subscription? A. Well, it was stated that their needs would be $1,100,000 and that would be raised by the $700,000 stock and the $400,000 loan and our commitment was based upon the assumption both things would be done; in other words, the whole job would be done. $1,100,000 was the total amount needed.

Q. Has your bank had anything to do with the solicitation of the stock subscriptions? A. Not a thing; no, sir.

Q. Do you know how much has been subscribed to date? A. I think a little over a hundred thousand dollars.

Q. And over how long a period was that solicited? A. I think about two or three days.

Q. Just recently? A. Just recently, while Mr. Davis had to spend some time down here, and hadn't had time to see a good many people.

Q. And were those people all Winston-Salem residents? A. Yes, sir.

Q. In your opinion would there be any market for the sale of that stock in any other community outside of Winston-Salem? Is it a purely local promotion, in your opinion?

[R. 2960]

A. Well, I think so far it is purely a local promotion, as far as it has gone. I have no doubt but what stock could be sold in other communities if that were thought desirable.

Q. And assuming a certificate, if granted by the Board, were only a temporary certificate, and if it were not renewed due to failure of the operation to afford a satisfactory service, or for uneconomic reasons, in your opinion would it make any difference, as far as the sale of this stock is concerned, that it was a possibility that the subscription might be lost entirely by the investor? A. I think the gentlemen that have subscribed realize that there is a certain amount of risk in this venture, as there would be in any business venture, and they are men in a position to take such a business risk.

Q. And in your opinion are all the men who have subscribed so far willing and ready to take such a risk? A. They have signed a statement where they have agreed to sign to the stock, if the certificate—to subscribe to the stock, if the certificate were granted, so I would consider that a legal, binding obligation.

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[R. 2961]

Cross examination (Cont'd) by Mr. Hill:

Q. Mr. Leinbach, from your experience as a banker is there any doubt in your mind that an airline backed by regular people and backed by the dignity of the Civil Aeronautics Board would be able to go out and sell stock to the general public with or without the assistance of an under-

writer? A. I think that would depend somewhat upon the character of the management and their past, proven ability which, in connection with Piedmont Aviation, I think is unquestioned.

If a group of men would get together and say: We want to operate an airline and it is going to be a good thing and if they have had no previous experience in air operations, I don't know whether people would subscribe to it, or not. It would depend upon past history in operating that type of business.

Q. You have found out that there is an unprecedented interest in the airline business as of today? A. I think there is, yes, sir.

Q. It would be easy to interest the investing public if you had anything to sell them? A. I think it would be reasonably easy.

[R. 2962]

Mr. Hill: That's all.

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Whereupon

THOMAS H. DAVIS resumed the stand and was examined and testified further as follows:

Cross examination (Cont'd.) by Mr. Zimmerman:

Q. Mr. Davis, will you turn to Exhibit PI-5? In the first paragraph you state that Piedmont does not at the present time does not own any Stinson SR-10C airplanes but it does own one Stinson 9C and 7B, and that those are similar to the 10. Do you know the difference in capacity between those two airplanes and the 10C? A. There is, as I recall, a difference of about 200 pounds in the standard 7B and the 10C.

Q. Which is less? A. The 7B being less. The 9C, for all practical purposes, is about the same; very little difference.

[R. 2963]

Q. Are you familiar with the differences in the windshield of the 9C and 10C? A. Yes, sir.

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[R. 2965]

Q. I am unable to determine how many Noorduyns you have allowed for in your cost estimates for the passenger

[R. 2966]

operation? A. Six.

Q. I believe you testified this morning that it's six. A. I beg your pardon. Six in operation. Two spares. Eight, all together.

Q. That would be eight all together? A. Correct.

Q. Would you give me the number of that exhibit; of the cost of the aircraft? A. P1-58.

Q. Will you turn to P1-69? Do you know whether the Noorduyn—I assume that this is Norseman—— A. Yes.

Q. (Continuing)—has an approved type certificate? A. No, sir. Not to date. The Civil Aeronautics Administration is to begin certification procedure of that aircraft within a very few weeks.

Q. Where do you intend to purchase these aircraft; in Canada or the United States. A. Preferably in the United States as surplus equipment.

Q. Have you anything on which to base your estimate of the probable cost? A. Yes, sir.

Q. What is that? A. Price advised by the factory.

Q. That is, Noorduyn Aviation, Limited, at Montreal,

[R. 2967]

Canada? A. Yes, sir.

Q. And how did you determine the surplus equipment cost from that? A. These figures are not estimated surplus prices.

Q. These are based on the Canadian quotation, then? A. Yes, sir.

Q. Do you know what the rate of duty on the importation of that aircraft is? A. No, sir.

Q. Is that included in this figure? A. No, sir. I am under the—or was under the assumption that that included duty fees. That was quoted to us as a resident of the United States.

Q. I didn't understand you. A. I assumed that that included duty fees, in view of the fact we are residents of the United States and naturally the aircraft would be transferred to the United States.

Q. But you don't know whether it does, or not? A. No, sir.

Q. Assuming that it did not, the price would be increased about 30 per cent, is that correct? A. If that is your statement, I assume it is correct.

Q. And that would make a corresponding increase in your depreciation costs for those aircrafts? A. If we bought new aircraft from the factory, yes, sir.

Q. Now you have certain exhibits in here which purport to indicate the estimated savings which would be effected

[R. 2968]

by operation of combined service, air mail pick-up, and mail, passenger and express operations. If you would turn to PI-84, I would appreciate your explaining to us the purpose of this exhibit. A. It is to show where a duplication of services can be eliminated by operating both operations under one organization.

Q. Now you are applying for a pick-up operation in which you will employ eight Noorduyn Norsemen. A. Yes.

Q. Those are two entirely separate and distinct operations; is that correct? A. No, sir. I wouldn't say entirely separate and distinct.

Q. How do you propose to integrate them? A. Well, for example, communications-maintenance. Of course administrative personnel and, as a matter of fact, even operational personnel could be changed around. Pilots, in some instances, if it was advisable. But that would effect no savings. Your savings would be in administrative, communi-

cations, ground operations, maintenance, et cetera, equipment depreciation.

Q. Would you accept a certificate for the pick-up operations alone? A. Yes, sir.

Q. Would you accept a certificate for the passenger service alone? A. Yes, sir. At the mail pay we request, if it's operated exclusively.

[R. 2969]

Q. I believe that this Exhibit PI-84 is intended to indicate that the items enumerated therein would be eliminated from your previous estimates of required personnel; is that correct? A. Previous estimates of required personnel, if both the passenger and the pick-up operation were operated jointly.

Q. Yes. Now does that mean, there, in account 501 on page 1 of that exhibit, that you would be able to eliminate one vice-president, in terms of operations? A. Yes, sir.

Q. Have you included in your exhibits any estimate of the cost of providing a reservation service for passenger tickets? A. Yes, sir. Let's see if I can find that for you. It would come under traffic. Do you have reference to the communications in regard to reservations; expense?

Q. Yes, and station personnel. A. Intermediate station personnel?

Q. Yes. A. Yes, sir, we have a statement in there concerning our proposal to utilize the services of fixed base operations along our route. We have contacted the majority of the established operations and have commitments from them to the effect that they are most willing to cooperate. Ticket sales will be made by them on a percentage basis.

Q. They will receive a commission, is that it? A. Yes, sir.

Q. And don't you think that if those people are charter

[R. 2970]

operators that they would endeavor first to sell the charter service and, failing in that, they would next try to sell your service? A. I don't much think so, Mr. Zimmerman. I am

a fixed base operator and I don't think I would, if I had contracted with a scheduled carrier to sell his ticket. I think I would sell all I could, and probably get a lot of business for my charter business out of his scheduled operation to off-line points. I think probably the benefit, or the additional revenue that a fixed base operator could expect, if he was on his toes, would more than offset his desire to try to talk them into a charter operation to any point on a proposed route and, of course, not only that, his rates would be considerably different, or in excess of what the scheduled carrier would charge.

I know we have in the past represented various airlines as agents on a commission basis and I can truthfully say that we have never tried to sell a charter seat, or charter trip to any passenger desiring air transportation to another point on that particular line if they had a schedule that would meet his needs, and if he came out at a particular time and had to be there right away, and couldn't wait for the next schedule, then we would go ahead and take him, but I am positive we have never encouraged it and I don't think anybody on our proposed routes would, either. I know most of them personally.

Q. You propose to use an aircraft that has a seating capacity of six, for the passengers, and you stated this morning that you realized that was inadequate to render the

[R. 2971]

best service for the public and that you did not deem it necessary at the present time to put on additional schedules. A. Those are your words. I said that those figures, those estimates are more than we could carry in the airplane but what we will find under actual operating conditions may be less, maybe more than we expect, and, with that in mind, I think our operational expense estimates are very conservative.

Q. Well, you, then, don't anticipate realizing the load factors that you have used in estimating your expenses? A. Yes, sir; we anticipate that.

Q. If you do that, that means you will be carrying capacity loads, is that correct? A. Yes, sir. That's the only way we want to operate.

Q. Under those circumstances, the charter operator would, if there were more than one passenger asking for your service, chances are he wouldn't be able to get space; isn't that true? A. If these estimates are accurate, that is true; until we added additional schedules.

Mr. Zimmerman: Thank you, that's all.

Examiner Newmann: Eastern?

Cross Examination (Cont'd.) by Mr. Russell:

Q. Mr. Davis, do I interpret you correctly if I say that you regard your proposed pick-up operation as merely a prelude to the development of a passenger service? A. No, [R. 2972]
sir. Not a prelude. I think it will work along very well together.

Q. What I mean is that the pick-up service is the initial step in the development of a passenger service over these pick-up routes that you have laid out. A. You are referring to the pick-up routes.

Q. That's right. A. Yes, sir. I think we ought to operate those routes without passengers until the Board sees fit to certificate scheduled operations in the same unit and haul passengers at the same time.

Q. That's your ultimate plan; is to enter upon a combination pick-up and passenger operation over those routes. A. I think it would be a feasible plan.

Q. Now if in the operation of the combination service you found that there was discomfort to the passengers in such an operation, you would have no hesitation in entering upon a purely passenger operation, would you? A. I don't believe, Mr. Russell, that the Board would certificate it if it was—if there was the slightest chance of the passenger being rendered uncomfortable by riding in a mail pick-up airplane. Assuming that your——

Q. Assuming that you had a combination operation, and then you decided that the passenger's comfort would be served better by a strictly passenger plane carrying only passengers—that is, without pick-up—you would have no hesitation in trying to meet the desires of your patronage, [R. 2973] would you? A. No, sir. To the extent we felt that we were capable of fulfilling their desires. As I said this morning, I am firmly convinced with the development of the South, or the Piedmont area, and the area which we have proposed service, whether combination passenger and pick-up service, is ever certificated, our passenger proposal here is inadequate later on but it would continue to be on a local basis; purely local.

Q. When you say "purely local" you mean that if on one of your routes you had a multiplicity of intermediate stops and the patronage indicated to you that they would like to ride from one place to another without so many intermediate stops, that you would say to them: No, if you ride with me you have to make all these stops. Would that be your plan, or would you seek non stop service? A. I would assume, Mr. Russell, that trunk line operation would either already be certificated, in such cases, or should be.

Q. Let's pick out a route and see if I can understand you. Take this route from Raleigh to Norfolk on your pick-up operations. We will assume that you have passenger authority over that route. How many—— A. In combination operation?

Q. Well, we will make it in combination operation, if you wish. How many of those stops would you say you would have to make between Raleigh and Norfolk and remain a local operation? A. I would continue to pick up mail at every one of those points. Maybe some additional.

[R. 2974]

Q. Let us assume, then, that you had passenger operation only, without pick-up. How many of the points would you—or what would be the least number of points you would serve on that routing and still be what you would call a local operation?

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A. 6. There are six points in there that I believe have adequate airport facilities and would warrant air transportation; would be able to support air transportation.

By Mr. Russell:

Q. What was the peak year of your charter operation, Piedmont Aviation, Inc.? A. I don't recall. Apparently this will be the peak year. We have done more in the first five months this year than we did in the first five months of last year; considerably more.

Q. What was the best rate that you ever offered the public on a charter operation? A. 14 cents a mile.

Q. And what type equipment was that? A. Stinson 10A.

[R. 2975]

Q. Is that one that has one seat on the right by the pilot and a wide seat back? A. A little jump-seat, behind.

Q. How many people can ride, in addition to the pilot? A. Two.

Q. And I wonder if you can give me a break-down of the trips in your charter operation for the first five months of 1945.

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Mr. Russell: I can state why I think it is pertinent. For two reasons; first, to show the nature and extent of the operations of the applicant and, secondly, to give an indication as to the need or lack of need for air service, generally I think it is pertinent for both of those reasons.

The Witness: I think it would express a lack—or a need for service, more than a lack of need. What I mean by that is

I don't think you can take charter operations, anywhere in the country, with but exceptions, and derive from those figures how much airline passenger traffic you can expect.

[R. 2976]

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Q. I wish you would consider with me a situation like Winston-Salem to Washington. Do you contemplate equaling Eastern's fare between those points? A. No, sir. Not necessarily. It might happen some day, that we would be on the same basis as other routes on our system.

Q. Do you contemplate equaling American's fare between

[R. 2977]

Roanoke and Washington? A. Not necessarily; no, sir.

Q. What are you going to do with a situation like Winston-Salem to Frederick? Eastern's fare from Winston to Washington is $13.85 and your fare from Frederick to Washington is $2.48, so that a fellow could ride to Washington on Eastern and take your service to Frederick considerably cheaper than he could ride all the way with you. A. Yes, sir.

Q. You don't contemplate that you will attempt to meet such situations by competitive or basing fares? A. No, sir. There will be a little over $2 difference, there. We wouldn't be in a position to.

Q. How about the situation—let us assume that a carrier certificated between Charlotte and Columbia, and over the direct mileage of 86 miles, and puts in a fare based upon 5.2 cents per revenue passenger mile; would you equalize that fare between Charlotte and Columbia? A. Not because the other carrier had that fare alone.

After operations were conducted over a period of time and the traffic potential built up and the frequency of schedules in effect, I am quite confident we would be in a position to come down to a more standard mileage rate, however.

Q. If there were another carrier operating between Charlotte and Columbia with the fare $4.47, and you had a fare of $6.71 which you propose, you wouldn't expect to carry

any business between Charlotte and Columbia, or a very [R. 2978] insignificant amount, if at all? A. If there were another carrier there, no, sir. We are not banking upon terminal-to-terminal traffic, to any extent.

Q. Do you contemplate any agency commissions? A. Yes, sir.

Q. Is that reflected in your traffic expense? A. Yes, sir. You referred to agency commission for intermediate points? Is that what you had in mind? Or hotel——

Q. I meant travel agents, and that kind of thing. A. Oh, no, sir.

Q. Do you contemplate any round-trip discounts? A. Provision has not been made for those, in these estimates.

Q. How about half fares? Any half fares? A. No, sir.

Q. In other words, you expect a full net rate of 5.5 cents from your 5.5 cent fare? A. Yes, sir. Close to it. Very close.

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[R. 2981]

99 per cent of the charter operations are for one individual person's taking his friends along, or family along with him and he looks at it as if he were paying the whole bill himself and on numerous occasions you will take one passenger who will have to pay the same price, too, no matter whether it is one or three.

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By Mr. Mills:

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[R. 2982]

Q. How many people were on this list of subscribers? A. As I recall, there were twelve.

Q. Twelve? Did you talk with all, personally? A. Yes, sir.

Q. Were there other people that you approached in regard to your subscriptions? A. No, sir.

Q. And of course you urged these people to take all they could? A. No, sir. I told them that we were in the process of conducting a hearing over here and our case would be coming up in this particular hearing and asked them if they would like to subscribe to some stock of our proposed air line operation, if and when we obtained a certificate, and——

Q. No reflection is intended, Mr. Davis. A. I understand that, sir.

Q. But you were actually trying to make just as good a showing as you could for this hearing, were you not? A. Yes, to a certain extent. Not necessarily. If we had taken the time, it would have been considerably more than that. We just contacted a very few prominent citizens in Winston-Salem whom we knew would use the service.

Q. You picked out the best prospects you knew of, didn't you? A. A few of them. Not altogether. In fact some of them that were on there, I wouldn't consider my best

[R. 2983]

prospects.

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[R. 2986]

Cross Examination (Cont'd.) by Mr. Cone:

Q. Mr. Davis, refer to Exhibit 49, page 1. I note on your route between Wilmington and Nashville shows a stop at Charlotte and Gastonia, a distance 14 miles apart. On your route 5 between Winston-Salem and Columbia, shows a stop, the distance between Rock Hill and Chester, South Carolina, is 14 miles. You don't propose service to Greensboro-High Point airport, do you? A. Not on passenger proposal; no, sir. Not directly to the airport.

Q. That airport is a distance of 16 miles from the Winston-Salem airport, is it not? A. I believe that is correct. I can tell you in just a minute (referring to document). Yes, sir.

Q. The exhibits sponsored by Dr. Brown show a considerable amount of so-called convenience and necessity of Greensboro and High Point, do they not? A. Yes, sir.

Q. And the distance or interval between Winston-Salem and High Point airports are greater than the interval proposed in your passenger routings, is it not? A. Yes, sir.

Q. And the only service you propose, then, to that airport, is through existing ground transportation from those cities into Winston-Salem? A. That is correct. At the present proposal.

Q. Would you be willing to offer service to Greensboro-High Point airport if same were indicated by an order of the Civil Aeronautics Board? A. Yes, sir. I would like to

[R. 2987]

have it understood here, now, that any point not included on our proposed routes, which are along our proposed routes, and which would not materially upset our plan of operation, that the Civil Aeronautics Board saw fit for us to service, we would be delighted to serve it.

Q. But your idea is that service to Greensboro-High Point would upset your plan of operation, as laid out in these exhibits? A. I think that's probably stretching the point a little bit. However, we are principally interested in a local air service and local air service will never be worth anything until we can deliver these people right in the back yard of the town, and if we have to depend upon regional airports, or airports that are far out of town, for local operation, there will be no need for it. The airline theory of having one airport to service four or five cities, I do not subscribe to, principally because in my opinion neither of those cities gets adequate service.

Q. Do you think you will get much local service between Charlotte and Gastonia, a distance of 14 miles? A. Local service between the two points?

Q. Yes. A. Not a great deal; no, sir.

Q. But you will get some Gastonia passengers for, possibly, Asheville, or through Charlotte to Salisbury? A. Yes, sir.

Q. Don't you think you might get some Greensboro-High Point passengers for Martinsville, Clifton Forge? A.

[R. 2988]

I feel very definitely we would, and Greensboro airport to which they would have to drive, isn't a great deal further from there on to Winston-Salem, but I would have absolutely no objections to serving that field if the Board so designated.

Mr. Cone: That's all.

The Witness: However, what I would like to see, if you had a little field close to town, let us come in there and deliver them there.

Mr. Cone: That's all.

Examiner Newmann: Mr. Morris.

Cross Examination (Cont'd.) by Mr. Morris:

Q. Mr. Davis, I call to your attention your Exhibit 49, proposed passenger service, and that part of one of your routes lying between Charlotte, Asheville and Knoxville. The service which you might be able to render between Charlotte, Asheville and Knoxville on that route would be definitely competitive with a route that might be awarded, there, to a trunk line operator, would it not? A. From Charlotte to Asheville to Knoxville?

Q. Yes. A. To a certain extent, yes, sir.

Q. The mileage would be approximately the same? A. Approximately the same.

Q. Would you be willing to accept a limitation on service that you might render across there, assuming that some other carrier such as PCA might be certificated to service Charlotte and Knoxville? Is there any practical limitation

[R. 2989]

which could be worked out to make your service non-competitive? A. You mean, such as no through passengers from Charlotte to Knoxville?

Q. Yes. We will say something like that. A. I don't believe there would be a need for such a limitation, Mr. Morris. If I may elaborate there: I would assume that the trunk line carrier would have frequency of service sufficient to eliminate the desire of a passenger going from Charlotte

to Knoxville, to go by the slower and the route which would stop more often. If he had adequate trunk line service, I don't think there would be a necessity for a limitation.

Q. Of course if it should be, the departures of even fairly frequent service should be so spaced there might be a demand for a potential, there, for the operator of the smaller equipment, we will say, or maybe slightly slower service, to become competitive?

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Q. Insert schedules; between schedules of the other operator, and get some business there? A. Oh, yes, sir. I am frank to say our route between Winston-Salem and Char-

[R. 2990]

lotte, for example, if both were certificated, but I don't think Eastern is, or should be, and I am not worried about the competition if both were certificated.

Q. Of course you, at present, propose to use war equipment but as your business developed you would go into larger or better equipment, if you feel it was needed. A. Yes, sir. We feel it is a happy medium. I don't believe a local service will ever require—well, I won't say ever, but won't for a long time require an airplane of the size of a DC-3. I think the happiest medium is to get one smaller, which will be needed to get in and out of the smaller fields which will be served, and have a more frequent schedule. Of course the ideal air plane for that purpose is not yet built; not even designed; not even the Saturn, in my opinion.

Q. Well, to return to my original question, is there, then, any limitation which would be satisfactory to you, which you could concede might be set up between Charlotte and Knoxville, to illustrate? A. No, sir.

Q. Would you be willing to accept a certificate with any limitation on that service? A. It depends on the limitation, entirely.

Q. You don't, at the moment, think that any would be practical, from your standpoint? A. Or from the trunk line carrier's.

Mr. Morris: That's all.

Examiner Newmann: Mr. Hill.

[R. 2991]

Cross Examination (Cont'd.) by Mr. Hill:

Q. Mr. Davis, have you analyzed the work reports over any considerable period to determine how frequently your operation in a daytime contact flight single-engine ships would be interrupted or delayed by conditions which would not delay or interrupt flights of twin-engine ships on an instrument operation? A. Yes, sir. There are times. We arrived at that 86 per cent completion of schedules more or less on a basis of our previous experience in flying over all of this area in the last several years.

Q. I don't think you understood the first part of my question. Have you actually made an analysis of weather reports based on your proposed schedules to show how many times you couldn't operate and a twin-engine ship could operate in a given time? A. No, sir.

Q. You did not? A. No, sir.

Q. How long did it take you to obtain these stock subscriptions you obtained? A. Three afternoons, after the hearing, here.

Q. Did you appeal to these people as hard-headed businessmen? Telling them you thought this would be a sound investment? A. No, sir. I went in and told them what we were planning to do and outlined the entire procedure to them and most of those fellows have already fair knowledge

[R. 2992]

of air transportation. They are not experts. They have been acquainted with it, one way or another. Asked them if they would like to subscribe, or become interested in this project, and from there on it was up to them.

Q. You did explain to them it might be a temporary certificate for three years? A. Yes, sir.

Q. Are these men hard-headed businessmen, to whom you appealed? A. I wouldn't say hard-headed, but good businessmen.

Q. That are not accustomed to throwing away money, are they? A. No, sir.

Q. Is there any doubt in your mind of your ability to obtain the remaining $600,000? A. Not a bit in the world. I think, as a matter of fact, we could sell it all to two people but, in my opinion, it isn't to the best interest of the public or company.

Q. Do you believe you would have much difficulty in selling it in smaller blocks? A. No, sir.

Q. You do not think that.

Mr. Hill: That's all.

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[R. 2996]

Mr. Sandridge: I now offer in evidence Exhibit PI-1 through 91, including 24-A, 47-A.

Examiner Newmann: Is there any objection?

(No response.)

Examiner Newmann: If not, Exhibits PI-1 through 91, and 24-A and 47-A, will be received in evidence.

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7. Portions of the Briefs to the Examiners: State Airlines, Inc. Record Vol. 26.

[R. 14307]

STATE'S POSITION BEFORE THE BOARD IS SUPERIOR TO THAT OF ANY OTHER NEW APPLICANT SEEKING TO SERVE THIS AREA.

Any discussion of the other new applicants should include All American Aviation, Inc.[7] First, however, we turn our attention to the seven new applicants whose applications, because of routes, proposed operations, or ability, bear the closest resemblance to those of State. In the order in which we shall treat of them, these are Bluegrass, Commonwealth, Piedmont, Seaboard, Southeastern, Southern, and South East.

So far as concerns Bluegrass, however, it should be noted at the outset that only between Louisville and Lexington, between Cincinnati and Lexington, and between Cincinnati and Ashland, do the routes proposed by Bluegrass conflict

[R. 14308]

with ours, and that we oppose the granting of only the last named of these and oppose none of the routes of Southeastern —provided, however, that in the event of certification of either of these two applicants, State is likewise granted a certificate for the routes which it stresses as most needed or for the others for which it has applied. Southeastern's projected routes conflict only with State's less essential proposed routes, Nos. 11 and 12.

The benefits of State's thorough planning and experience become most clearly apparent when we draw comparisons based on the elements of proposed routes, ability, proved need, and operating plans. In drawing such comparisons

[7] All American Aviation, Inc., and Bluegrass Airlines, Commonwealth Air Transport, Inc., Piedmont Aviation, Inc., Seaboard Air Transport, Inc., Southeastern Air Express, Inc., Southern Airways, Inc., and South East Airlines, Inc., will be referred to hereinafter as All American, Bluegrass, Commonwealth, Piedmont, Seaboard, Southeastern, Southern, and South East, respectively.

hereinafter, we shall first dwell upon these applicants as a group and follow thereafter with a separate discussion of specified individual characteristics.

With the possible exception of those of Bluegrass, none of the sets of routes proposed by these applicants show the integration of those proposed by State. As a matter of fact, these other applicants seem to have quite ignored the subject of integration, whereas it is noteworthy under State's proposals that if its Routes 2, 3, 7, 8, and 9 were certificated, Routes 4 and 5 could be added with only one additional ground stop. And few indeed of the routes of these other applicants are as direct or necessary as those proposed by State, which manifestly are the fruit of more exhaustive planning and greater foresight. With the same exception above noted, no records of air transportation were introduced by any of the other new applicants, although four (Piedmont, Seaboard, Southeastern, and Southern) testified that directly or indirectly they had furnished charter service (R. 1556-9, 1875-6, 1936-7, 2021). State, then, with scrupulously maintained records of its experience, is the only applicant to prove by charter service the need for local service. The average charter operator seeks only long-haul traffic such as mentioned by Piedmont. State, conversely, set out to prove—and did prove—that local air travel is practical. Incidentally, apropos of the vainglorious claims of other new applicants that in their diverse activities they had operated profitably in the past, it is significant that during the years when State was concentrating—at considerable cost to itself—on demonstrating the need for its proposed service in this area, it was urged to participate, and could have participated, in lucrative Government-financed pilot-training programs. Thus, while State has foregone the financial rewards which it could have reaped from such programs, it has gained the fund of experience which has enabled it to file what are by far the most practical applications in this proceeding.

In respect of financing, it should be noted that State is the only new applicant specifically to include an initial development expense prior to operation and subsequently to

certification (Ex. STA-38). Piedmont presumably makes such an allowance, but it indicates by its Exhibit PI-81, page 1, that pre-certificate expense would amount to almost as much as the $17,000 allowance shown in Exhibit PI-72, page 1, for authorization of the passenger routes only. With the exception of South East and State, all these other new applicants propose initial equipment-trust financing ranging from $50,000 (Ex. SEA-11, page 1) to $800,000 (Ex. SO-14, page 3). Whereas it is to be seen from the table on page 55 of this brief that all other new applicants underestimate expenses, at the same time none propose working capital to cover operations for more than about three months,

[R. 14309]

presumably suitable if expenses are conservatively estimated. With the exception of Southeastern, whose requirements may exceed the amount pledged (R. 1945), and Bluegrass, an addition to whose expenses might quite conceivably necessitate increased equity beyond the bank's requirement (Ex. STU-56, page 1) and the partners' ability, State was the only new applicant with a firm commitment for all the funds required.

It might be noted at this juncture that State's financial witness, Mr. Stralem, took into account permission of depreciation within the term of a temporary certificate. This, however, does not mean without a residual allowance as set by the Board, since State's estimates included both. In fact, the three-year basis was furnished pursuant to the opinion of the Board in the *Feeder Investigation*, and it may naturally be assumed that a limited duration would take into account a corresponding depreciation rate when a mail rate is set.

Of interest also is the fact that State's investment devoted to the objective of certification is the largest, discounting the hangar which one Southern Airways company built and sold to another, which in turn leased it to a third. The smallest investment is that of Seaboard. State's stockholders, numbering 52, form the largest group; the fewest are represented by Bluegrass.

In support of its proposals State presented air-mail data, 1933 rail and diversion data, and hotel registration records on a more complete basis than any other new applicant. While Southern furnished hotel registrations and similar information, these were so compiled as not to reveal the over-all needs of the communities. State also furnished a traffic estimate and other important comparative data by routes. No other new applicant's exhibits contained such information. In the following table, taken from State's exhibits, are set forth some of the more significant characteristics of the routes stressed by State:

Route Number and Description	Length in Miles	25-mi Population per Rt. Mi. (Thousands)	Principal Point to Point: Average Number Schedules Rail	Principal Point to Point: Average Number Schedules Bus	Savings over Fastest Surface (Percent)	Est. Pas Rev. Mil
2. Cincinnati-Norfolk	541	4.4	3.2	6.7	77	19
3. Louisville-Charlotte-Wilmington	566	2.7	2.0	5.7	81	9
4. Roanoke-Wilmington	252	2.8	2.0	5.0	81	8
5. Louisville-Norfolk	553	2.7	2.6	7.3	82	15
7. Louisville-Greensboro-Wilmington	564	3.2	1.7	9.2	84	10
8. Cincinnati-Charleston	522	3.8	1.6	4.3	84	12
9. New Bern-Chattanooga	501	2.9	4.0	14.5	81	11

(Exs. STA-7, STA-13, and STA-31, page 9)

While the other new applicants did not necessarily prove community of interest or the necessity for their proposed service, all furnished traffic estimates on which to base revenues and schedules on which to base costs. Since Commonwealth (R. 2709), Seaboard (R. 1655), Southeastern (R. 1975), and South East (Ex. F, page 1, section 1) estimated traffic on a load-factor basis only, for revenue purposes, there is no means of checking the validity of their estimates or the revenues. The others which used and applied a formula were Bluegrass, Piedmont, and Southern. The Bluegrass formula is not readily understandable (Ex. STU-55). Piedmont's formula appears valid (Ex. PI-55, page 1) except for the fact that it is based on conventional air transporta-

tion with an average of 36 miles between stops, the lowest [R. 14310] of any new applicant, with the result that the requisite time advantage is lost. In fact, we can not find that Piedmont shows in its exhibits any time savings in relation to surface transportation. Even though its schedules are as fast for the Norseman (which is a slow plane) as for a DC3, at these average distances between stops it shows one hour 20 minutes from Charlotte to Columbia (Ex. PI-47, page 4) whereas State shows forty minutes (Ex. STA-34, page 3); thus, although Piedmont depends for traffic upon the number of stops, their frequency would be a serious drawback.

Southern's formula (for which its president disclaimed responsibility—R. 2021) is based on a large number of assumptions (Ex. SO-140) which can not be verified and failed to take into consideration other necessary factors (R. 2115-7). The net result was only 2.3 passengers per revenue plane mile (R. 2117). As in the case of Piedmont, moreover, its stops are close together, 49.6 miles apart, and in addition its routes are extremely circuitous. For example (and the same comparison may be made with Piedmont), Southern's Route B (Ex. SO-15, page 2), after entering North Carolina, makes four right-angled turns before terminating at Wilmington. From the following table, using Southern's fare of five cents per mile and State's fare of 5.5 cents per mile, it will be seen that with a travel time value of only $1.25 per hour (Ex. STA-21), a trip from Charlotte to Wilmington would be something more than fifty percent more expensive by way of Southern:

CHARLOTTE TO WILMINGTON

	Miles	Fare	Best Time	Time Value at $1.25 per hour	Total Cost (Time plus Fare)
Southern	312	$15.60	3:19	$4.17	$19.77
State	198	11.00	1:40	2.08	13.08

(Exhibits STA-13, page 5, STA-33, page 1, SO-79, page 5, and SO-81, pages 2 and 3)

It is apparent that such circuity as Southern proposes could only secure local travel at a prohibitive cost. The same is true of other portions of their same route, as from Greenville to Charlotte and from Asheville to Winston-Salem, Greensboro, Raleigh, and Wilmington. Such service, while faster than that by bus or rail, becomes so slow as to be little faster than travel by automobile. It must be considerably faster if it is to obtain local traffic.

It is reasonable to conclude, then, that except in the case of State, whose direct service is comparable to that rendered during the CAB traffic survey, these traffic estimates are simply the expression of a hope.

With revenues so indefinite, the estimates of the other new applicants in respect to expenses should be subject to a more exact check. The basic factor in expenses is schedules. The schedules, however, appear generally too fast, operate into night hours on a contact basis, and show unreasonable contact performance percentages. Nearly all costs have to be revised and generally increased on a mileage basis if fewer miles are flown.

On speeds, it should be recognized that not only will increased loading because of the nine thousand-pound proposed gross on the Beech, as included by many of these applicants, reduce its speed to equal that of a DC3, but that it will probably require also the same size airports for take-off. Saturn times likewise are apparently understated; they show, in the case of Seaboard for example, 27 minutes for

[R. 14311]

70 miles, whereas the corresponding figure for the faster Lodestar is about 31 minutes. Since only State proposes planes currently operated on schedule, however, only State's times are subject to check. Incidentally, Piedmont proposes a single-engine plane (the Norseman) on the theory that the law allows it. The law does allow it, but civil air regulations require that the terrain be "suitable," a description which most assuredly can not be applied to the Appalachian Ridge.

The span of schedules proposed by those applicants intending to operate on a contact basis, together with anticipated performance, is as follows:

	Commonwealth	Piedmont	Seaboard	Southeastern	Southern
Performance	95% (R. 2700)	86% (PI-61)	90% (SEA-10)	95% (SAE P. 177)	95% (R. 2014)
Hourly span	6:30 A.M. 7:01 P.M.	8:A.M. 6:29 P.M.	6:29 A.M. 10:01 P.M.	7:15 A.M. 6:15 P.M.	5:50 A.M. 8:18 P.M.
	CAT-G	PI-47 P. 3 and 4	SEA-9	SAE P. 179	SO-67, 81, 95, 109, 123, 137

Of course, nearly all applicants stated that they expected to institute night and instrument operations as soon as possible. In order to do so and to make all stops, however, the airports must be lighted and the aircraft adequately radio-equipped. Yet the maximum allowance made by any new applicant, save State, for aircraft radio, is $2,000 by Southeastern (Ex. SAE, page 186). State's allowance, specifically naming and embracing the items required for this type of operation, is $3,500 (Ex. STA-38).

State supplied the only weather record (Ex. STA-58) included in this proceeding. It showed that at eleven points in this area from eight to seventeen percent of the annual hours were closed and instrument. As an added matter of interest, the highest contact performance was indicated by Southeastern (97 percent for the second year—Ex. SAE, page 177), whose exhibits contained fifteen pages of letters of commendation and kindred matter (Ex. SAE, pages 12-27). In explanation, their witness stated that he had only "a little bit" of experience in the Southeast under day contact operations (R. 1086).

Southeastern, however, did propose its own personnel and radio at all ground stations, even though the costs therefor are probably underestimated (Ex. SAE, pages 186, 190), as are those for other items such as use of one spare airplane for nine in service (Ex. SAE, page 185). Southern, on the other hand, proposed to use fixed-base operators as agents without knowing whether they would even be available.

When pressed on the subject, Southern's witness said that if there are none when it is ready it will "cross that bridge when they get to it" (R. 2164-5). Obviously, it will be necessary that many other bridges be crossed (R. 2135-8) before the costs of Southern and these others are on a practical basis, far greater than those estimated.

Examination of all cost items for new applicants in comparison with those of State (and we could go on with this almost indefinitely if time and space permitted) shows the complete provision for costs which State has made. It can only be concluded that State's costs are realistic, and, furthermore, that State's suggested means of achieving economies are the only truly practical ones which will insure safety and secure traffic. The superiority of State's proposal is the divi-

[R. 14312]

dend on the investment of money and toil which over the years has been put into rendering a new and better air service. By contrast, we invite attention to the proposal of Commonwealth, which means to retain as president and vice-president men who have had no previous aviation experience (R. 2677). As a matter of fact, Commonwealth's president did not even appear at the hearing (R. 2665).

Piedmont's noted economist rightly said that "in general problems can be solved better by parties who do not undertake to solve too many diverse problems" (R. 1857). Notwithstanding his testimony, Piedmont would operate what are "basically two distinct operations" (R. 1867), would operate both together (R. 1906-7), or both combined, with their requirement of different routes (R. 1878-80), but would not hesitate, if such combined operations caused discomfort to its passengers, to operate passenger service only, "but local, purely local" (R. 1907-8). These operations would be in addition to numerous other diverse activities in which the company engages (R. 1873). We are content to leave to the Board the task of reconciling these curious conflicts.

All American's proposal, limited to pickup, is naturally not a response to the needs and desires of the many cities of

the Southeast for passenger service, which, as proposed by State, can be instituted at far less cost. All American's president realized this; he stated that he did not see any reason, if passenger service is needed now, why it should not be established (R. 430) and that the need for his service is increased if cities and routes are added to the present pattern, provided they be not thereby preempted (R. 430). All American's vice-president also emphasized that their position was not that passenger routes were not justified (R. 467). It is readily apparent, therefore, that State's proposed service should be certificated and, after that has been accomplished, that consideration may be given to pickup for the many still unserved points.

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[R. 13867]

BEFORE THE

Civil Aeronautics Board

WASHINGTON, D. C.

In the matter of the applications for certificates of public convenience and necessity and for amendments of certificates under Section 401 of the Civil Aeronautics Act of 1938, as amended.	Docket No. 501 et al.

BRIEF ON BEHALF OF PIEDMONT AVIATION, INC.

INTRODUCTORY STATEMENT

The applications consolidated in this proceeding propose both local-feeder and so-called trunk line service, and airmail and express pick-up service within the Southeastern states. Because of the steady and healthy growth of this area and because of the inadequacy of presently available transportation facilities, both surface and air, the applications in general propose new and sorely needed additional service.

Piedmont Aviation, Inc., a corporation organized under the laws of the State of North Carolina, recognizing the public need for an improvement in the transportation system throughout the Southeast, proposes a comprehensive local air transportation system throughout North and South Carolina and Virginia. Portions of the proposed system extend into the states of Georgia, Tennessee, West Virginia, Maryland, and the District of Columbia. This general area is often referred to as the South Atlantic Region or the Piedmont Area, and constitutes the most concentrated portion of the entire Southeast, population-wise as well as industrially. The Company is not presently certificated as an air carrier by

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Note: Bold print has been supplied for emphasis.

the Civil Aeronautics Board. The principal offices of Piedmont [R. 13868] are located in the Terminal Building of the Smith Reynolds Airport in Winston-Salem, North Carolina, at which airport the Company is conducting a general aircraft sales and service operation, including flight training activities and non-scheduled passenger service to points within the United States. All of the officers, directors and stockholders of Piedmont Aviation are citizens of the United States, residing in Winston-Salem, North Carolina.

The position of Piedmont Aviation with respect to the presently certificated trunk line operators is exactly that of American Airlines in reverse (Tr. 151), in that Piedmont is "not opposed to any of the" trunk line operations applying "in this proceeding, provided that is actually what they are, provided they are not" local or feeder line proponents "in disguise and provided also that these applicants are geographically and economically justified and are so proven to be." In taking this position, and since there are several applicants in this case whose proposals are so separate and distinct from the application of Piedmont either geographically or in types of service proposed, no discussion of these proposals will be made here.

THE APPLICANTS

The applicants consolidated in this proceeding are: All-American Aviation, Inc.; American Airlines, Inc.; Atlantic and Carolina Airways; Blue Grass Airways; Braniff Airways, Inc.; Chicago and Southern Air Lines; Colonial Airlines, Inc.; Commonwealth Air Transport, Inc.; Cotton Belt Airlines, Inc.; Delta Air Corporation; Eastern Air Lines, Inc.; Gillespie Airways; National Airlines, Inc.; Pennsylvania-Central Airlines, Inc.; Piedmont Aviation, Inc.; Prairie Airlines, Inc.; Seaboard Air Transport, Inc.; South East Airlines, Inc.; Southern Airways, Inc.; Southern Aviation Corporation; State Airlines; Transcontinental and Western Air, Inc.; Tri-State Transit Company; and Virginia Stage Lines.

THE INTERVENORS

The Cities of Albany, Ga.; Asheville, N. C.; Anderson, S. C.; Brunswick, Ga.; Cincinnati, Ohio; Charleston, S. C.; Charlotte, N. C.; Greensboro and High Point, N. C.; Green- [R. 13869] wood, S. C.; Jacksonville, Fla.; Louisville, Ky.; Memphis, Tenn.; Mobile, Ala.; Norfolk, Va.; Owensboro, Ky.; Tifton, Ga.; Tupelo, Miss.; and Winston-Salem, N. C.; the Counties of Campbell, Ky.; and Greenwood, S. C.; and Pan Atlantic Steamship Corporation and South Carolina Aeronautics Commission.

THE APPLICATION OF PIEDMONT AVIATION, INC.

Piedmont, recognizing the previous industrial development of the South Atlantic Area, was mindful of not only the present needs of the area but also the transportation facilities to be required by the inevitable future expansion and growth of "the new South."

Because of the inadequacy of railroad transportation in this particular area, the advent of the automobile brought about the rapid development of numerous medium sized communities which have grown into towns and cities of sizable proportions scattered irregularly throughout the area, for which service is proposed by Piedmont. There are no metropolitan districts within this area and the irregularity of location of numerous important towns and cities needing, but not enjoying air service, presents a transportation problem surmountable only by a concentrated system of local and pick-up air service. (Tr. 1823)

Public Need for the Proposed Service

Any statements made, or facts furnished here would be superfluous in further substantiating the need of additional air service, particularly local air service in the Piedmont Region. The record of this proceeding and that of the Great Lakes-Florida proceeding (Docket 570 et al) is replete with factual data and testimony proving the need for additional air service.

It should be emphasized, however, that the area for which Piedmont proposes service constitutes only a portion of the area under consideration in this proceeding, and that this portion is: (1) more thickly populated than the remaining portions; (2) more highly developed industrially; and (3) enjoys very limited rail and air transportation service. This area is the heart of the South and presents an excellent op-

[R. 13870]

portunity for the development of local air transportation.

As Dr. Brown so aptly stated, in referring to the South Atlantic Region, "—there is no one center in this region of such importance that it could serve as a hub with spokes running out to minor points. —— These secondary centers have **much more** community of interest with one another than you would find in an area dominated by one center and having very small ones lying around it." (Tr. 1823). It would appear, then, that the greatest need in this region would be a concentrated local air transportation system.

Certification of Piedmont

The certification of Piedmont to render the service applied for would insure the greatest amount of improved service where it is needed the most. It is granted that this particular area is in some instances lacking in trunk line service, and the certification of some additional trunk line service is in the public interest. However, as pointed out previously, the geographical aspects of this particular area are such that the greatest public need can be fulfilled by a local air transportation system designed to tie the large number of medium sized communities into the cities now enjoying trunk line service.

Piedmont has designed its system in this direction. The original application of Piedmont requested a certificate to provide combination pick-up and passenger service, which will ultimately be the solution to the local air service problem. However, after further study and consideration the application was amended to provide for 15 airmail and express pick-up routes and five conventional mail, passenger and express routes, of a purely local nature. In view of the

limited experience of transportation of passengers during pick-up operations, it seems advisable to progress into the combination service phase only after sufficient experimentation has been completed, to insure not only the Board but also the public of its safety and utility. To guarantee the progress of our country and development of the South, no time should be lost in getting started with the expansion of the local air transportation industry. Therefore, the proposed system of Piedmont was designed in such a manner as to instigate service with the least amount of lost time. Airmail

[R. 13871]

pick-up service has been proven successful and definitely in the public interest. Passenger service likewise has long since been proven successful. By the operation of local passenger service over the most likely successful routes proposed by Piedmont and airmail pick-up service to the many smaller communities within the area, most of which have no airport facilities, it will be possible to gain an unlimited amount of experience in both types of operation and, more important, educate the public in the safety and utility of both types of service. All of this can be accomplished while rendering a public service and at the least possible cost to the public.

Piedmont's Mail and Express Pick-Up Proposal

The pick-up routes designed by Piedmont will serve the majority of the smaller communities within the area not equipped with airports, and some of which could not support passenger service at the present time. Most of these communities have no direct rail service.

The types of operation conducted by Piedmont in the past deserve serious consideration. Piedmont operated a cross-country pilot training program, during which time its personnel flew many thousands of hours over virtually every mile of the proposed pick-up routes. Because of the type of flying required for pick-up operations, this familiarity of the personnel of the Company with the South Atlantic Region is of great importance.

As mentioned previously, Piedmont's original application requested a certificate for combination pick-up and

passenger service, and the route layout was patterned after a study of both mail and passenger movements. When amended, the pick-up routes were changed only slightly. As a result, each of the 15 pick-up routes are readily adaptable to combination passenger and pick-up service. If, in the opinion of the Examiners and the Board, a combination service is more in the public interest, then Piedmont is ready to accept such certificate without disrupting its present plan of operation to any significant degree. In recommending a combination service in the West Coast Case (Docket 250 et al.) the Examiners were mindful of the "many advantages [R. 13872] in the combination service" and that "these factors lead to the conclusion that every opportunity should be afforded for a full and adequate experiment with combination passenger and pick-up equipment."

Piedmont's Local Mail, Passenger and Express Proposal

The passenger routes proposed by Piedmont are along routes of established movement as shown by highway and rail figures. The points along these routes are of sufficient importance to support local passenger service and are so located that trunk line service would be impractical. Insofar as importance is concerned, it would be practically impossible to logically eliminate any one point along these routes without eliminating the majority of them, and thus end up with a weak trunk line operation which could not provide the needed service.

Route 1 of Piedmont's passenger proposal follows the popular Shenandoah Valley. It provides connections from the Piedmont area into the valley, a route presently having very limited and circuitous surface transportation facilities, and no air service. This route also provides an outlet into the nation's capital.

Route 2 is possibly one of the most needed of all routes, in view of the traffic potential and the inadequacy of existing transportation facilities. This route could not be properly served by a trunk line service in view of the importance of

intermediate points and their proximity to each other. The Examiner, in referring to this particular route in his report of the Great Lakes-Florida case (Docket 570 et al.) stated "It is quite possible that service over the—Charleston-Norfolk segment of the Cincinnati-Norfolk route might be in the public interest, if limited to a local feeder type of operation, using small capacity equipment and authorized on a temporary basis." While Piedmont's proposed Route 2 does not extend west of Roanoke to Charleston, it is felt that this segment would better be served by a trunk line operation, as has been recommended by the Examiner in the Great Lakes-Florida case, and which will undoubtedly be certificated. There does not appear to be sufficient intermediate communities between Roanoke and Charleston at present, nor

[R. 13873]

sufficient local traffic between the two points to justify the certification of two carriers over this segment at the present time.

Route 3 likewise is adaptable only to a local feeder type of operation, and the evidence clearly indicates that there is sufficient traffic potential to justify such a route if operated on a local basis. This route extends from Knoxville, Tenn., to Wilmington, N. C., via numerous intermediate points. The Examiner's report on the Great Lakes-Florida case further indicates that "there appears to be some indication that local service might be required between Knoxville and Wilmington."

Route 4 is an important connection from Columbia, S. C., to Asheville, N. C., via Greenwood, Anderson and Greenville, S. C. The record clearly shows that existing surface transportation is inadequate between Columbia and Asheville and beyond, and further that there is sufficient traffic potential to justify new air service of a local nature which would connect important intermediate points along this route.

Route 5 extends from Winston-Salem, N. C., to Columbia, S. C. While the Winston-Salem-Charlotte segment of this route is presently certificated, it is so crowded with important intermediate industrial communities located only short distances apart that there is sufficient public need for the in-

auguration of a local operation to serve all of these communities. The same condition exists between Charlotte and Columbia, and the certification of trunk line service between these points has recently been approved by the Board. However, the importance of the intermediate points along this segment is such that they should not be deprived of the advantages of air transportation. These intermediate communities cannot be practically served by trunk line operations.

Piedmont's Fitness and Ability

The certification of Piedmont would place the operation of a local air transportation system for the South Atlantic Area in the hands of an established organization located in the heart of this area. Piedmont is probably more familiar with the territory to be served from an operational standpoint than any of the other applicants. The pilots of Piedmont have flown many thousands of hours over this entire area. The personnel of the Company are familiar with the people of the area and the people are familiar with Piedmont.

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Piedmont understands and appreciates the problems of the people of the area and is in a position to work closely with these people and "talk their language" when selling local air transportation.

Piedmont's management and operational ability have been proven over a period of years. There is no need to elaborate on Piedmont's fitness, willingness and ability to successfully operate the proposed service. Piedmont is in a position to begin operations as quickly or quicker than any of the other applicants for similar types of service within the South Atlantic Area. Adequate hangar and shop facilities are presently available, as well as the majority of the required personnel, with the exception of pilots. A sufficient number of pilots now serving with either the Air Transport Command or with scheduled airlines will be available before certificates are awarded in this case. Each of these pilots has previously been employed by Piedmont and has had extensive flying experience throughout the Southeast.

Piedmont has had experience in operating and maintaining fleets of aircraft and has available sufficient shop facilities and personnel, certificated by the CAA, to maintain the number of aircraft proposed to be operated.

Piedmont's financial condition has improved steadily since its organization, and there is every indication that it can operate the proposed system with the same success. The support as evidenced by prominent citizens of Winston-Salem (Tr. 1890) and the Wachovia Bank and Trust Company (Exhibit PI-6, pg. 2) is concrete evidence of the soundness of the present organization and the ability of Piedmont to begin the projected operation adequately financed.

In considering the exacting requirements for certification by the Board there are very few organizations willing to provide the needed service who so completely meet these requirements as does Piedmont.

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ALL-AMERICAN AVIATION, INC.

Generally speaking, that portion of the application of All-American lying east of Knoxville, Tennessee, and Charleston, W. Va., and south of Washington is the same as the pick-up portion of Piedmont's application. The experience of All-American in this type of operation and their decision to lay out a route pattern quite similar to that of Piedmont further substantiates the practicality of the routes proposed by Piedmont. Piedmont's application, Docket No. 1422, was filed June, 1944. The application of All-American was filed January, 1945. (Tr. 422).

There is no question that All-American is fit, willing and able to conduct a very efficient airmail pick-up operation. However, it is logical to assume that their proposal could better be operated by a capable organization already existing in the heart of the subject territory. The advantages of having years of experience of operation within a certain area and the advantages of being familiar with the people therein are not to be overlooked. Piedmont, being a Southern organization, would naturally experience less development costs in

providing the proposed service than would All-American.

In view of the extensive applications of All-American pending before the Board in the New England area, the Southeastern area and the Great Lakes area, there are indications of a monopolistic desire, which is definitely not in the public interest.

The public should be protected by the establishment of another certificated airmail pick-up operation. By the certification of Piedmont, the Board would have the advantage of a comparison of operations costs in addition to other advantages.

ATLANTIC AND CAROLINA AIRWAYS

This non-carrier applicant proposes conventional mail, passenger and express service within the state of North Carolina on a local basis, using small aircraft.

While some portions of the routes proposed are portions of routes required by public convenience and necessity, it is apparent that they would not be sound economically from an operational point of view.

The directors of this company are undoubtedly very

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capable businessmen with a great deal of experience, except in air transportation. They have had no aeronautical operating experience of any kind and would undoubtedly be confronted with insurmountable problems if a certificate were granted them.

EASTERN AIR LINES, INC.

Among Eastern's several proposals in this proceeding the most interesting is their proposal to serve Petersburg, Lynchburg, Roanoke, Danville, Reidsville, Burlington, Salisbury, Anderson, Athens and/or Gainesville, Anniston and/or Gadsden, Dothan, Pensacola on Route 5; and Petersburg, Rocky Mount, Goldsboro, Fayetteville, Southern Pines-Pinehurst-Aberdeen, Florence, Athens, Augusta, and Charlotte on Route 6. Eastern is very vague on exactly how it proposes to serve these additional points. Captain Rickenbacker pointed out

(Page 13 of his written testimony) that these smaller communities can be served "on a skip-stop and local basis without sacrificing the value of its (Eastern's) through service." This would appear to indicate that local schedules, skip-stop schedules, and through schedules would all be operated over Routes 5 and 6. However, Captain Rickenbacker continues by saying that all this can be accomplished "without the necessity of operating schedules merely for the purpose of serving the new intermediate points." Unquestionably additional schedules must be operated if Eastern is to provide these additional points with local service. Admittedly, stops at these towns could be made on a skip-stop basis, but not local, without adding additional "schedules merely for the purpose of serving the new intermediate points." Therefore, it is apparent that Eastern is trying to "hog" these smaller communities by giving them skip-stop service and then contending that they are adequately served. In an address before the Feeder Airline Association in Washington, June 15, 1944, Mr. William A. M. Burden, Assistant Secretary of Commerce, stated that "Many of the larger air transportation companies have evidenced little faith in the local airline business, except as a skip-stop service, set up primarily to connect the small city—with the big city and with the long distance trunk airline service.

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"This pessimism seems justified only if one assumes that local airlines of the future will be operated according to past trunk line standards——. It overlooks the fact that the past record on very short distance local service (30 to 100 miles) connecting sizable towns indicates that from 50 to 75% of the passengers have been local passengers.

"Many airlines claim, and rightly so, that their figures demonstrate that with marked exceptions small towns do not use airline service to any significant degree. It is true that the traffic potentials of small towns remain to be proven. This is one reason for establishing experimental local service as soon as practicable and giving it a fair opportunity to build up traffic over a period of years.

"In many cases the service now rendered to the 100 towns of 25,000 or less on the present trunk line system consists of a very few stops per day at inconvenient hours. To date, and almost invariably so, small cities and towns have never had a set of airline schedules designed to meet their particular requirements **and no wholehearted attempt to do just that is likely to be made unless there are lines wholly or largely dependent on small town patronage and operated by people who have enough courage, independence and faith in the prospects of such service to bet their money and business careers on the outcome.**

"In this connection I sympathize with Dr. Warner's contention on his dissent in the Morgantown case that until CAB policy on who is to operate local airlines is determined decision should be reserved on who is to serve many of the smaller cities of 10,000 to 50,000 which the trunk line wish to serve, as shown in their applications now before the CAB. **Every one** of these applications that are granted takes a large chunk out of the prospective business of a local airline in that territory ——. This could seriously prejudice future local airline operations and it is to be hoped that the CAB will avoid it before a definite policy decision is arrived at as to whether trunk or local lines should operate."

Captain Rickenbacker also states that the principal advantages of air transport are realized over distances exceeding 100 miles. "Only in exceptional circumstances will the airplane be able to compete with the private automobile and surface transportation on trips of less than 100 miles." Why

[R. 13878]

then, does Eastern intimate that it will provide local service? This statement will come to be true if the campaign of many existing air carriers, designed to encourage the building of airports many miles from the city in order that one stop at that field can serve two or three other cities, is continued. In these cases **neither** city gets adequate service. Unless those passengers who would use local air service can get to and from the airport in not over 15 minutes' time and cheaply, they will probably [redacted] to surface transportation facilities. These are primary requisites for an airport to be used by a

local airline, as well as the private flyer. The airport should also be close enough to town to be provided with frequent, local public transportation facilities.

Assuming that Eastern is serious about its intimation that it will provide local service, they have indicated that the Lockheed Saturn or Douglas Sky Bus or similar equipment will be used for this purpose. Captain Rickenbacker states "In most situations the only additional expense to Eastern of providing the required service will be the ground cost of new stations." (Page 14 of written testimony).

Captain Rickenbacker has had many years of aviation experience and should know that if it is necessary to operate two different types of aircraft, he will have to stock parts for two aircraft, not one. He will have to have two different kinds of spare propellers, two different kinds of spare engines, mechanics familiar with two different aircraft, and he would probably, in order to obtain the highest in efficiency, wind up with two separate and distinct overhaul shops. Would not these costs be added to the costs of service for these intermediate points? Furthermore, Captain Rickenbacker testified that Eastern proposes to use CW20's, Constellations and possibly DC4 or DC6's (Page 11 of written testimony) which would further increase his maintenance costs.

SEABOARD AIR TRANSPORT, INC.

This company is a non-certificated applicant, proposing two routes, one from Wilmington, N. C., to Knoxville, Tenn., and the other from Norfolk, Va., to Columbia, S. C. These two routes intersect at Lumberton, N. C., where the applicant proposes to establish the operations base.

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It is difficult to determine whether this applicant professes to operate a trunk line or local-feeder type of operation. The route layout indicates that it is potentially more of a trunk line type of operation.

If this is the case, it is difficult to visualize a trunk line system of only 733 route miles being an economically sound operation.

If the proposed system is to be of a local-feeder nature, then the routes as designed are not in the public interest. The proposed system uses as a hub of operations a city of only 5,803 population (SEA-35, Pg. 1). On the Knoxville-Wilmington route the applicant would include Rockingham, N. C., as an intermediate point, having a 1940 population of only 3,657 (SEA-36, Pg. 1). Yet, on this same route, the applicant plans to fly over, but not stop at, Wadesboro, population 3,587; Monroe, population 6,475; Shelby, population 14,037; and Gastonia, population 21,313. Piedmont's Knoxville-Wilmington route has a total intermediate point population of 60,773, excluding Asheville-Hendersonville and Charlotte, N. C.; while Seaboard's intermediate point population is only 9,460, excluding Asheville-Hendersonville and Charlotte, N. C.

While Mr. H. M. Barnes, president of Seaboard Air Transport, has had varied aeronautical experience, this corporation is not presently engaged in any phase of commercial aeronautical activity. Nor does it have available any facilities at present which could be used in the projected operation. In order to establish a base of operations in Lumberton, it would be necessary to build hangars, shops, offices, etc., because no such facilities are now constructed at the Lumberton Airport with the exception of one very small hangar.

From the available evidence the routes as proposed do not appear to be in the public convenience and necessity, and in addition, the applicant failed to show sufficient evidence to prove fitness and ability and a true knowledge of the problems of scheduled air transportation.

SOUTHERN AIRWAYS, INC.

Southern Airways, Inc., also a non-certificated applicant, proposes an extensive conventional local system throughout a large portion of the Southeastern area. Southern also was

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an applicant in the Florida case. The Examiner of this case has recommended that any decision with respect to Southern's Florida applications be delayed until a decision has been handed down in the Southeastern States Case.

This applicant submitted sufficient evidence to indicate its fitness, willingness and ability; however, here again the ambitions of the applicant extend into territory with which they are not familiar. Prior to June, 1945, the operations of the applicant were confined primarily to Alabama, Georgia and South Carolina.

It is submitted that any routes which may be granted to Southern Airways, Inc. should be confined to the southern section of the Southeastern area, so that these routes can be integrated with their proposed routes applied for in the Florida case (Docket 489 et al.).

STATE AIRLINES

The proposed system of State appears to be a trunk line system, but instead of resorting to the skip stop basis, plans scheduled stops at every intermediate point on every route. The evidence submitted by State does not support the contention that it is fit and able to perform the ambitious proposal. With but few minor exceptions, State's proposal in the subject case is identical to its proposal in the Great Lakes-Florida Case. While State's president, Mr. H. K. Gilbert, Jr., emphasizes the fact that the proposed operation will include "stopping at all points" (STA-G, Pg. 12), it is apparent that the operation would be as much of a trunk line nature as that of many existing carriers.

Certification of State would, in addition to the establishment of another trunk line operation within the Southeast, preclude the development of a strictly local air transportation system in that area. If State proposes to be a local operator, why did they not propose service to Kinston, N. C., a town of 15,388 population, directly over which State would fly between Goldsboro, N. C., and New Bern, N. C.? Kinston is much more in need of additional transportation facilities than is Rock Hill, S. C., population 15,009, for which the applicant proposes service. Perhaps this is an indication of State's lack of knowledge of the real problem to be solved, or the lack of

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ability to go into the field of scheduled air transportation.

Furthermore, a majority of the points to which State proposes services are presently certificated for air service.

In view of the fact that State's proposal is basically the same as its proposal in the Great Lakes-Florida Case, it would appear that the statement of the Examiners in their report of that case would likewise apply in this instance. This report, in referring to State's proposal, stated that "It would appear far more practical to grant the existing carriers new intermediate points on their routes than to have a new carrier duplicate the existing routes merely to bring service to a few new communities." In spite of the fact that State's application is based on "national needs" (STA-G, Pg. 4), it apparently does not yet know whether the Southeast needs additional trunk line service. There is every indication that State is quite "on the fence" and is reluctant to take a definite stand as to whether the greatest need of the Southeast is an expansion of trunk line facilities or an extensive truly local service. State recognizes the needs of a few of the small important communities in the Piedmont district but overlooks the fact that its system would not provide service to a much greater number of communities of equal or greater importance, scattered throughout the area.

It would seem that a progressive non-scheduled carrier with over four years experience (STA-22, Pg. 1) would have shown more progress than State appears to have made, especially since it has not been burdened with the duties of selling "goggles, logbooks and other aviation knickknacks" (STA-P, Pg. 2). The evidence presented by State's president indicated that the popularity of his service had decreased during the past 12 months, instead of increasing, as has the charter business of most organizations providing such service.

SOUTH EAST AIRLINES, INC.

The organization of this non-carrier applicant is composed principally of pilots and maintenance personnel, now employed by Consolidated Vultee (Exhibit D-Section 3, Pg. 2, Sub-Section D-3-1). They propose a system of local passenger service over various routes and airmail and express pick-

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up service over other routes, lying principally within the Piedmont area.

South East failed to show that its proposed routes were required by the public convenience and necessity and that the organization was fit and able to provide the service if it were in the public convenience and necessity.

Perhaps the most vivid indication of the overly optimistic expectations of the company is exemplified by the fact that no spare aircraft are contemplated. When examined on this point, South East's witness stated that no spare aircraft would be needed, in spite of the fact that each ship would have to fly approximately 8.7 hours per day, 365 days a year (Tr. 2318). When such a feat is possible, many of the problems confronting the air transport industry will vanish, but there is no question but what such an ideal situation cannot exist at the present time.

Apparently South East has attempted partially to foreclose the Board's judgment upon their interstate application by commencing a scheduled intrastate passenger service August 27, 1945.

VIRGINIA AIRWAYS

Virginia Airways is not presently certificated as an air carrier, but proposes in this case scheduled air transportation over various routes lying within Virginia and North Carolina. Virginia Airways is the name of the aviation division of the Virginia Stage Lines, Inc., which company holds franchises for scheduled bus operations. Mr. E. V. Boyd, Virginia Airways' witness, stated in his written testimony that "The service would be auxiliary, supplemental and incidental to the bus operations."

Piedmont does not contend that it is within its province to determine whether or not this applicant can meet the conditions of Section 408 (b) of the Civil Aeronautics Act, but the applicant failed to show conclusively that its proposed air service pattern would remain "auxiliary, supplemental and incidental" to its bus operations.

The evidence supporting Virginia Airways' contention that it was fit and able to render the proposed service, even if it were in the public convenience and necessity, was quite [R. 13883] insufficient. The business ability of Mr. S. A. Jessup is unquestionably very exceptional. However, there is seldom a business requiring so much technical and specialized ability to insure successful operation as does the air transport industry.

CONCLUSION

There is need for the establishment of a strictly local passenger and airmail pick-up operation within the South Atlantic Region. The routes applied for by Piedmont are in the public convenience and necessity. Piedmont is fit, willing and able to provide the service applied for. Piedmont will provide, by the inauguration of the system it proposes, the most needed service to the greatest number of people within the area under consideration. The area for which Piedmont proposes service is the most adaptable to and needs local air transportation more than any other area under consideration in this proceeding. Piedmont has the "know-how" to get the most results out of the smaller communities. Piedmont is in a position to begin service quicker than any other non-certificated applicant. Piedmont is more familiar with the area than any other applicant.

We respectfully urge that all of the applications of Atlantic and Carolina Airways, Seaboard Air Transport, Inc., South East Airlines, Inc., Virginia Airways, and State Airlines be denied in their entirety; that that portion of the application of All-American proposing service south of Washington and Charleston, W. Va., and east of Knoxville, Tenn., and Atlanta, Ga., that applications of Eastern proposing additional intermediate stops on Routes 5 and 6, and that Route R-B of Southern Airways, be denied; and that the application of Piedmont Aviation, Inc., be granted.

Respectfully submitted,

WOMBLE, CARLYLE, MARTIN & SANDRIDGE

[R. 13144]

SUMMARY OF RECOMMENDATIONS.

For reasons set forth in the main part of this brief, we have recommended as follows:

1. That a temporary three-year certificate of public convenience and necessity be issued to Commonwealth Air Transport, Inc. for the following route:

Between Covington (Cincinnati) to Knoxville, Tenn., via Frankfort, Lexington, Danville, Somerset, Corbin and Middlesboro, Ky., and

Between Paducah, Ky., and Covington, Ky., via Princeton and Madinsonville, Ky., Evansville, Ind., Owensboro, Louisville and Frankfort, Ky., and

Between Huntington, W. Va., and Nashville, Tenn., via Lexington, Frankfort, Louisville, Elizabethtown, Glasgow and Bowling Green, Ky., and

Between Covington and Louisville, Ky., as co-terminals, and Charlotte, N. C., via Lexington and Hazard, Ky., Bristol, Va., and Hickory, N. C., and

Between St. Louis, Mo., and Nashville, Tenn., via Cape Girardeau, Mo., Paducah and Hopkinsville, Ky.

2. That a temporary three-year certificate of public convenience and necessity be issued to Southern Airways, Inc., authorizing it to engage in air transportation over the following routes:

Between Memphis, Tenn., and Jacksonville, Fla., via the intermediate points Tupelo and Columbus, Miss., Tuscaloosa, Birmingham, Gadsden and Anniston, Ala., Atlanta, LaGrange, Columbus, Americus, Albany, Moultrie, Thomasville and Valdosta, Ga.

Between Jackson, Miss., and Savannah, Ga., via Meridian, Miss., Selma, Montgomery, and Opelika-Auburn, Ala.; Columbus, Macon, Dublin and Statesboro, Ga., and

Between Atlanta, Ga., and Charleston, S. C., via Gainesville, Ga., and Athens, Ga., Anderson, Greenville-Spartanburg, Greenwood, Columbia, Sumter, Florence and Georgetown, S. C.

3. That a temporary three-year certificate of public convenience and necessity be issued to State Airlines, Inc., authorizing it to engage in air transportation over the following routes:

Between Cincinnati, Ohio and Roanoke, Va., via Portsmouth, Ohio, Ashland, Ky.—Huntington, W. Va., Charleston and Princeton-Bluefield, W. Va., and beyond Roanoke, Va., to Norfolk, Va., via Lynchburg, and Richmond, Va., and be-

[R. 13145]

yond Roanoke, Va., to Wilmington, N. C. via Danville, Va., Reidsville, Greensboro, Burlington, Durham-Raleigh, Fayetteville, Lumberton, Goldsboro, New Bern, N. C., subject to the condition that Fayetteville and Lumberton shall not be served on the same flights serving Durham-Raleigh and Goldsboro.

4. That the certificate of Pennsylvania-Central Airlines Corporation for Route 51 be amended by extending it from the terminal Knoxville, Tenn., via Chattanooga, Tenn., to a new terminal Memphis, Tenn., and by the addition of Charlotte and Winston-Salem.

5. That the certificate of Pennsylvania-Central Airlines Corporation for Route 55 be amended by extending it from the terminal Birmingham, Ala., to the new terminal Mobile, Ala., and

6. That the certificate of Eastern Air Lines, Inc., for Route 5 be amended by adding Danville, Va., as an intermediate point between Greensboro-High Point, N. C., and Washington, D. C.

7. That the certificate of Eastern Air Lines., Inc. for Route 6 be amended by adding Southern Pines-Pinehurst

Aberdeen, to be served as one stop, as an intermediate point between the intermediate points Raleigh, N. C., and Columbia, S. C., and by the addition of Augusta, Ga., as an intermediate point between the intermediate points Columbia, S. C., and Savannah, Ga.

8. That the certificate of Eastern Airlines, Inc., for Route 10 be amended by adding Rome, Ga., as an intermediate point between the intermediate points Chattanooga, Tenn., and Atlanta, Ga., and by adding Waycross, Ga., as an intermediate point between the intermediate points Macon, Ga., and Jacksonville, Fla.

9. That all other applications and proposals be denied.

Respectfully submitted

/s/ MERLE P. LYON
Merle P. Lyon

/s/ V. ROCK GRUNDMAN
V. Rock Grundman
Public Counsel

8. Portions of Examiner's Report. Record Vol. 22.

[R. 11686]

Piedmont Aviation, Inc.—Piedmont Aviation, Inc., was incorporated under the laws of North Carolina on July 2, 1940, with its principal offices located at Winston-Salem, N. C. Three thousand shares of common stock of $10 par value per share have been issued, of which 1,846 shares are held by Thomas H. Davis, 1,151 shares by L. S. McGinnis, and 1 share each by Egbert L. Davis, Jr., Milton F. Fare, and James Frank Groat, all of whom except Mr. Fare are directors. The officers of the company are Thomas H. Davis, president and treasurer, James Frank Groat, vice president, and Milton F. Fare, secretary. All of the officers, directors, and stockholders are citizens of the United States.

The aviation experience of Mr. Thomas H. Davis, president-treasurer of Piedmont, dates back to 1934. In 1939 he became sales manager of Camel City Flying Service and in connection therewith traveled extensively throughout the proposed territory demonstrating various types of aircraft. Mr. Davis served as vice president, treasurer, and director of Piedmont from July 1940 until June 25, 1943, when he became president-treasurer and a director. He presently holds a commercial pilot certificate and has logged approximately 3,500 flying hours. Mr. Davis is a member of the North Carolina Aeronautics Commission.

Mr. Groat is presently vice president of Piedmont and chief pilot. Mr. Fare was formerly an accountant with Armour and Company and later employed by the accounting firm of Ernest and Ernest. He joined Piedmont in 1940 and was appointed chief accounting officer and assistant secretary in 1941. Mr. Fare became secretary of Piedmont in 1944 and has continued supervision of its accounting department since that time.

Piedmont has operated as a fixed base operator at Winston-Salem since 1940 and has engaged in charter operations, aircraft rentals, sales, overhauls, repairs, and flight instruction. During the war it was awarded several government contracts for flight training in primary, pre-glider, secondary (acrobatic and precision flying), cross-country, instruction, and night flying courses. The company conducted a total of 31,975 hours of all types of flying without a serious accident. This was in addition to thousands of hours of private flight instruction and charter services rendered without a serious accident. At the time of the hearing Piedmont operated one of the leading Civil Aeronautics Administration approved aircraft and engine overhaul repair stations in the Southeast. The flight personnel of Piedmont has had extensive experience in cross-country flying, and they are particularly well acquainted with operating conditions in the proposed territory. In 1944 Piedmont conducted 41,875 miles of charter operations and over 26,000 miles in the first 5 months

of 1945, largely in the territory embracing its proposed routes. This service was performed without accident.

Piedmont proposes to operate air mail pick-up service over 15 routes and to transport passengers, mail, and property over 5 routes as set forth in appendix No. 1.

[R. 11687]

Piedmont does not at the present time own any aircraft suitable for use in its proposed services, but it does own approximately 50 percent of the required furniture and fixtures and all of the necessary shop equipment except a few special tools. Piedmont presently employs 4 pilots, 3 of whom have instrument ratings, 9 licensed mechanics, 28 specialized and unlicensed mechanics, and 1 licensed radio technician. Many of Piedmont's former pilots and graduates of its cross-country school have filed applications for employment, and the necessary personnel could be obtainable if the proposed service is authorized. Piedmont proposes the use of 19 Stinson Sr 10 C aircraft in the operation of its air mail pick-up routes, and it estimates that 8 Noorduyn Norseman airplanes would be needed for service over the passenger, mail, and property routes.

Piedmont estimates that approximately $1,100,000 will be needed to finance its proposed operations. It is proposed that this capital be raised by the issuance of 70,000 shares of common stock at $10 par value per share, and by borrowed capital in the amount of $400,000. The Wachovia Bank and Trust Company of Winston-Salem has agreed to grant applicant a term mortgage loan of $400,000 which will be secured by the latter's flight equipment.

Piedmont's annual revenues estimate for air mail pick-up service are based on 2,936,040 miles flown and a 92-percent completion factor. As a basis for the estimates of mail to be handled on applicant's proposed pick-up routes, the 1942 postal receipts on All American Aviation's route No. 49 was used. All American's experience indicates that smaller cities have a much greater volume of air mail for pick-up routes than do the larger ones. It was estimated that the 15 pick-

up routes would have an air mail potential of 2,203,882 pieces of mail monthly. After certain reductions for so-called focal points, the estimated air mail potential for the entire system was scaled down to 1,871,446 pieces of air mail monthly. It is estimated that on the basis of 8 cents per piece of air mail the gross postal revenues would be $149,716 monthly and $1,203,572 annually. Applicant estimated that $29,360 would be derived annually, or 1 cent per revenue mile for the carriage of express and freight.

Applicant estimates that in addition to the $29,360 estimated annual revenue, or 1 cent per revenue mile, which would be received for the carriage of express and freight it would need $1,203,572 in mail pay, or 40.99 cents per revenue mile, in order to produce an 8-percent return on its investment of $650,000 in the air mail pick-up operation.

Piedmont's operating costs are estimated at 41.99 cents per revenue mile which consist of total operating expenses of 38.44 cents per revenue mile, 0.39 cents per revenue mile for deductions from income, and 3.16 cents per revenue mile for interest on investment.

[R. 11688]

Piedmont's estimates of annual revenue for its 5 passenger, mail, and property routes are based on 1,523,043 miles flown and an 86-percent completion factor. Applicant estimates that with an average load factor of 4.81 passengers at a fare of 5.5 cents per revenue mile it would receive annual passenger revenues of $403,064, or 26.46 cents per revenue mile. Express and freight revenues are estimated at $15,230, or 1 cent per revenue mile. In order to produce an 8-percent return on the invested capital of $450,000 in its passenger, mail, and property operation, Piedmont estimates that $330,785 mail pay, or 21.76 cents per revenue mile, would be required. Piedmont's operating costs for its 5 passenger, mail, and property routes are estimated at 49.22 cents per revenue mile which consist of total operating expenses of 44.49 cents per revenue mile, 0.51 cents per revenue mile for deductions from income, and 4.22 cents per revenue mile for interest on investment.

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[R. 11690]

State Airlines, Inc., was incorporated under the laws of the State of Delaware in December 1939, and shortly thereafter qualified to conduct business in North Carolina and South Carolina. For several months prior to incorporation, while the company was in a formative stage, and until August 1941 when actual operations were inaugurated, State's activities consisted primarily of conducting extensive surveys to determine which points in the area would generate the greatest air travel per capita of the population. Since April 1941, State has operated a charter flying service based at Charlotte, N. C. The total number of persons employed by State at any one time since it was organized has varied from 4 to 16, depending upon requirements. At present there are nine persons associated with the company.

H. K. Gilbert, Jr., president, has been actively engaged in transportation for the past 17 years. During 1928 he served as agent for the Atlantic-Pacific Stages, Inc.; from 1929 to 1939 he held various positions with heavy duty automotive equipment manufacturers, the last of which was as sales manager of Differential Wheel Corporation. From May 1939 to date he has been president and director of State. Since organizing State, Mr. Gilbert has devoted all of his time to the promotion and development of the company. George C. Henry, vice president and director, is an aviation security analyst with White, Weld and Company, New York City. A. Pagenstacher, III, secretary-treasurer and director, is a partner of Ingles-Snyder. The balance of the personnel are engaged in research, publicity, piloting, and maintenance. All of the officers, directors, and stockholders are citizens of the United States.

State has applied for certificates to operate over 12 routes as set forth in appendix No. 1. The area which State proposes to serve may be described as that region lying between a wide arc from Morgantown, W. Va., through Charleston, W. Va., Cincinnati, Ohio, Louisville, Ky., and Chattanooga, Tenn., on the west, and the Atlantic coast between Norfolk,

Va., and Charleston, W. Va., on the east. Regions lying within this area may be referred to as the Appalachian, including the area from the east side of the Appalachian Range, extending west; the Piedmont lying immediately east of the mountains; and the South Atlantic Seaboard, lying along the coast between Norfolk and Charleston. The record shows that within a 25-mile radius of the 11 points in Region 1 there is a population of 3,048,900; of the 21 points in Region 2, a population of 3,248,200; and of the 15 points in the Atlantic Seaboard Region, a population of 1,847,300, or a total population of 8,144,400, for the points to be served in the entire area. Because of the terrain with the Appalachian Mountain Range extending northeast and southwest across the area, and the peculiarities of its drainage, railroads have fostered travel along routes parallel to the mountains and have failed to develop routes from the Piedmont area over the mountains or to the coast to any appreciable extent.

[R. 11691]

Notwithstanding repeated attempts to develop transmountain travel, there is at this time only one railroad crossing the mountains at anything approaching a right angle between Lynchburg and Atlanta, a distance of more than 400 miles. Consequently the area is heavily dependent upon buses for surface transportation between the three regions. Air service is available between a portion of the points on State's proposed routes, but most of it is circuitous and comparatively slow.

State contends that it is better qualified to furnish the service required in the southeastern area than any of the other applicants in this proceeding. It pointed out that with very few exceptions none of the other applicants has shown integration of its routes as State has done; that State has made exhaustive notes of the needs of the area; that it is the only new applicant with firm commitments for raising the required funds and, finally, that it is the only new air carrier which has submitted realistic estimates of expenses based on

actual experience. Established carriers, it contends, are not as well suited to render the necessary service because of their natural tendency to devote their efforts to promoting long-haul traffic, and it is impossible to adequately serve the area without frequent stops and the development of extensive short-haul traffic.

In selecting the type of equipment it expects to use in the proposed operation, State has considered adaptability and availability of several types of craft. It asserts that while short-haul aircraft developments are anticipated to provide greater economy and efficiency of operations, the most practical craft presently available is the Douglas DC-3.

For the total operation proposed by State the estimated capital requirements amount to $3,422,500. If only a portion of the 12 routes are certificated, such capital requirements would be greatly reduced. Hallgarten and Co. has agreed to act as underwriter for raising the necessary capital to finance operations of whatever routes the Board may see fit to award to State. In addition, State's president testified that the present stockholders are financially able and willing to purchase additional stock in substantial amounts necessary to finance the operation of the proposed routes.

Using the DC-3 State estimates that its total operating costs will be 68.7 cents per mile. On the basis of the 12 routes proposed by State it estimates total revenues at the rate of 66.6 cents per revenue mile including mail pay at 0.3 mill per pound-mile, which would indicate a deficit of 2.1 cents per mile plus allowance of a sum sufficient to allow a reasonable profit. These cost estimates appear to be optimistic both in relation to the cost of operating DC-3s and with respect to the anticipated passenger revenues. State's exhibits showing the method by which it arrived at these estimates, however, are complete and detailed and in the absence of standards for the type of service proposed by State, they will be accepted as reasonable. Such estimates are based upon the operation of all 12 routes applied for and in the event only

a portion of the 12 routes is certificated, the costs would undoubtedly be higher.

[R. 11692]

Conclusions.—In the *Investigation of Local, Feeder and Pick-up Air Service, supra*, the Board referred to the problems involved in short-haul or local service and the many factors affecting it. The Board pointed out that the traffic potential to be served by such a service is not encouraging, that competition by surface transportation will be keen, and that the advantages of air transportation will diminish as the length of haul of the proposed operation becomes shorter. With respect to the cost to the Government the Board stated:

> "It becomes incumbent upon us, therefore, to authorize so-called local and feeder services under certain safeguards for the overall economy of our air transportation system and for the financial liability of the Government in the form of mail compensation. Safeguards available for use in this connection appear to be: (1) the limitation of such authorizations to temporary periods, and (2) confining them to operations which show a justifiable expectation of success at a reasonable cost to the Government."

The Board further stated:

> "We shall give careful consideration to the prospective cost of the service to the Government, and to the share of the carrier's total revenues which it would appear likely that the Government will have to provide to permit continued operation during the initial years."

The Board then went on to indicate what each applicant for local, feeder service would be expected to prove in meeting the tests of public convenience and necessity and justifiable expectation of success at a reasonable cost to the Government. These elements are as follows:

(a) The need for the service.

(b) The probable use that would be made of it.

(c) The effect upon existing air services.

(d) Cost to the government in mail compensation bearing upon a reasonable relationship to these elements and to the character and quality of the service proposed.

It seems clear from the record that Atlantic and Carolina Airways, and South East Airlines can not meet the tests set out by the Board. Atlantic and Carolina submitted no estimates of anticipated revenues or expenses and its exhibits contain nothing more than the economic characteristics of the cities on its proposed routes. They contain no information with respect to its fitness and ability or its financial qualifications. Mr. James F. Ficklen, the principal witness on behalf of this applicant, admitted that the group of men associated with the company have no other qualifications to

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run an airline except their general business experience. He testified that they would secure the proper management to operate the business successfully and stated that this was his intention. The only man with aviation experience interested in the company is Lt. James E. Todd who has signified his interest in the company in the event it is awarded a certificate.

Mr. Ficklen testified that the applicant did not prepare any estimates of income or expenses because it has no basis for preparing such estimates. He admitted that the company has no organizational basis for the conduct of its air transportation. The applicant has proposed no tentative schedules, has given no indication of the amount of mail pay required to break even, and has made no studies of traffic potential.

With the exception of its president, all of the officers and directors of South East Airlines have had aviation experience. This applicant, however, has failed to show any need for its proposed service, the effect upon existing air services, or that its operations will show a justifiable expectation of success at a reasonable cost to the Government. The evidence presented by this applicant is therefore insufficient to support a finding that the public convenience and necessity require its proposed services. In view of the foregoing considerations it is recommended that the Board find that the services proposed by Atlantic and Carolina Airways, Inc., and South East Airlines, Inc. are not required by the public convenience and necessity and that the applications of these applicants should be denied.

The four remaining applicants for service in the Carolinas and Virginia are State, Virginia Stage Lines, Piedmont, and Seaboard Air Transport who appear to be fit, willing, and able to conduct the operations which they propose.

The proposal of Seaboard Air Transport contemplates three routes: (1) between Wilmington, N. C. and Knoxville via Lumberton, Rockingham, Charlotte and Asheville; (2) between Lumberton and Columbia via Florence and Sumter; (3) between Lumberton and Norfolk via Goldsboro, Greenville and Fayetteville. This applicant does not propose service to such North Carolina cities as Raleigh, Durham, New Bern, Winston-Salem and Greensboro-High Point and does not propose to connect the Piedmont area with direct one-carrier service across the mountains to Louisville which the record shows to be required by the public convenience and necessity. Seaboard has not presented any plans indicating that it would or could conduct such an operation since its plans are limited to the three routes which have been set forth above.

State Airlines on the other hand has presented a proposal which, together with the recommendations hereinbefore made with respect to Southern Airways, will adequately meet the

needs for local service in the Carolinas. The president of State Airlines, Henry K. Gilbert, Jr., is experienced in the transportation field and is thoroughly familiar with the area his company proposes to serve. He founded State Airlines in December 1939 and since that time has devoted all of his

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time to the affairs of that company and to research on the problems of air transportation. The facts of record leave no doubt that State Airlines is fit, willing, and able to conduct the operations it proposes. The applicant presented statistics showing the results of 45 months of actual charter operations in the area which it now seeks to serve. During this period State carried 1,463 passengers and received an additional 5,666 passenger requests and inquiries. Mr. Gilbert has made extensive studies of airline operations and of the needs of the southeastern area and his experience in this respect provides an important background for the proposed service.

The stockholders of the company have a net worth of about $2,000,000 according to sworn statements and they have indicated their willingness to purchase substantial blocks of stock if a certificate is acquired. State also introduced into the record a letter from Hallgarten and Company, a New York underwriting firm, indicating its willingness to act as underwriter in raising the necessary capital should a certificate be granted. It is concluded therefore that State is fit, willing, and able within the meaning of the Act to conduct the operations which it proposes.

State's proposals contemplate service not only in the Carolinas, but extending beyond this region to Louisville and Cincinnati to the northwest and Norfolk to the northeast. While the record shows a need for substantially all of the routes proposed by State, it is felt that portions of the proposed routes could be better integrated with the operations of other local or feeder air carriers than by authorizing one carrier to operate all of the required services. Accordingly, it has been recommended elsewhere in this report that Com-

monwealth Air Transport be authorized to operate between Cincinnati and Charleston, W. Va., and that Piedmont Aviation operate between Roanoke and Norfolk.

While State's proposal would provide service to a large number of cities in the Carolinas, which the record shows require such local service, it appears that certain modifications in the routes proposed by State are necessary in order to adequately serve the area. It is recommended that State Airlines be awarded a certificate for the following routes:

1. From the terminal point Louisville, Ky., via the intermediate points Lexington, Ky., Bristol, Va./Tenn., and beyond Bristol, Va./Tenn. (a) via the intermediate points Asheville, N. C., Hickory, N. C., Statesville, N. C., Charlotte, N. C., Rockingham-Hamlet, N. C. and Fayetteville, N. C., to the terminal point Wilmington, N. C., and (b) beyond Bristol, Va./Tenn., via the intermediate points North Wilkesboro, N. C., Winston-Salem, N. C., Greensboro-High Point, N. C., Burlington, N. C., Raleigh-Durham, N. C., and beyond Raleigh-Durham, (1) via the intermediate points Wilson, N. C., and Greenville, N. C., to the terminal point New Bern, N. C., and beyond Raleigh-Durham (2) via the intermediate points Goldsboro, N. C., and Kinston, N. C., to the terminal point New Bern, N. C. In addition it is recommended that State be authorized to conduct a seasonal operation from New Bern to Morehead City, N. C.

[R. 11695]

2. From the terminal point Raleigh-Durham, N. C., via the intermediate points Fayetteville, N. C., Lumberton, N. C., Florence, S. C., Sumter, S. C., to the terminal point Columbia, S. C. It is further recommended that a seasonal operation be authorized to permit the carrier to serve Myrtle Beach, S. C., as an intermediate point between Lumberton, N. C., and Florence, S. C.

3. From the terminal point Raleigh-Durham, N. C., via the intermediate points Burlington, N. C., Greensboro-High Point, N. C., Winston-Salem, N. C., Salisbury, N. C., Charlotte, N. C., Rock Hill, S. C., Chester, S. C., and Camden, S. C., to the terminal point Columbia, S. C.

Virginia Airways and Piedmont Aviation have applied for authority to conduct operations in the Carolinas and to Washington, D. C., via various intermediate points in Virginia. In view of the route recommended for State Airlines it is concluded that the services proposed by Piedmont and Virginia Airways in the Carolinas are not required since the record will not support a finding that there will be sufficient traffic at the present time to sustain two local or feeder operators in that area. The record does, however, show a definite need for an outlet from the Piedmont to Roanoke and local service from Roanoke to Norfolk via Lynchburg, Charlottesville, Richmond, and Petersburg. In addition the record establishes a need for a route from Roanoke to Washington, D. C., via Covington-Clifton Forge, Lexington, Staunton, Harrisonburg, and Winchester, Va., and Martinsburg, W. Va. The selection of the carrier to provide this service lies between Virginia Airways and Piedmont Aviation.

The record makes it quite clear that the driving force behind Virginia Airways is its president, Mr. Jessup, a highly successful Virginia businessman. There can be no doubt of his ability to develop and finance an organization which would provide satisfactory service over the routes involved. Virginia Stage Lines, the bus company, realized a net income of $131,517 in 1944 and its balance sheet of December 31, 1944, showed total assets of $1,622,207 and earned surplus of $455,939. Virginia Airways has conducted no air transport operations. As previously indicated the applicant contends that the services proposed through the integration of air and highway in the transportation of per-

sons, property, and mail will be supplementary, auxiliary, and incidental to the services performed by the bus company. In line with that contention Virginia Airways submitted exhibits giving illustrations of a passenger moving over the route partly by bus and partly by air. On the basis of the record it is difficult to find that the air service is anything other than an alternate means of transportation to the bus company and it is difficult to say how the applicant offers any service which could not be performed by an independent airline through appropriate arrangements, such as privileges of stopovers and joint tickets. However, it does not appear necessary to pass upon the question of whether or not Virginia Airways has met the tests set forth in section 408 of the Act since the comparative public interest weighs heavily in favor of Piedmont Aviation to operate the proposed services.

[R. 11696]

Piedmont, since its inauguration in 1940 has experienced substantial growth. At the time of organization the company obtained distributors and franchises from manufacturers of personal type aircraft; and aircraft sales and service were the principal activities of the company until the outbreak of the war. In addition to aircraft sales Piedmont developed a flight training program for individual students. The school was approved by the Civil Aeronautics Administration in 1940 as a Government approved primary and advanced flying school. Jointly with the development of the flying school, highly trained personnel and specialized equipment were obtained for the installation of a ground school for the instruction of all aeronautical and allied subjects. The applicant has been awarded many Government contracts for flight training in primary, pre-glider, secondary, cross country, instructor and key flying courses.

In August 1940 Piedmont started its first Civil Aeronautics Administration pilot training contract under the Civilian Flying Training Program. This was one of the first non college units and Piedmont was selected as one of the 14

Type A Civil Aeronautics Administration training centers to be established in the entire United States. In January 1942 Piedmont was awarded a contract by the Defense Supply Corporation to train Central and South American students to become flight instructors. In April 1943 the company obtained a lease for operation of the Greensboro-High Point airport, at which it conducted AAF Aircrew Indoctrination Flight Training program, in addition to the training programs being conducted at Winston-Salem. This contract was completed in June 1944. In March 1943 Piedmont was selected as one of the two cross country training centers in the Southern Civil Aeronautics Administration Region. Piedmont points out that in conducting this program it obtained valuable experience in aircraft operation similar in many respects to scheduled air carrier service. Thus the key flight personnel of Piedmont have had extensive experience in cross country flying and are particularly well acquainted with operating conditions and landing and emergency weather facilities throughout the states to which service is proposed.

During the year 1944 Piedmont conducted 41,874 mail and charter operations, most of which were over the territory for which scheduled operation is proposed. All of this mileage was flown without a single accident. There can be no doubt from the experience and successful record of Piedmont that this applicant has the ability, facilities, key personnel and "know how" to properly perform the operation which has heretofore been found required by the public convenience and necessity. In view of the foregoing considerations it is recommended that the Board find that Piedmont Aviation, Inc., should be authorized to operate over the following route:

1. From the terminal point Winston-Salem, N. C., via the intermediate points Greensboro-High Point, N. C., Reidsville, N. C., Danville, Va., Martinsville, Va., Roanoke, Va., and beyond Roanoke, Va., (a) via the

intermediate points Covington-Clifton Forge, Va., Lexington, Va., Staunton, Va., Harrisonburg, Va., Winchester, Va., and Martinsburg, W. Va., to the terminal point Washington, D. C.; and beyond Roanoke, Va., (b) via the intermediate points Lynchburg, Va., Charlottesville, Va., Richmond, Va., Petersburg, Va., to the terminal point Norfolk, Va.

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[R. 11768]

RECOMMENDATIONS

Based upon the foregoing considerations and all the facts of record it is recommended that the Board find that the public convenience and necessity require:

1. That Commonwealth Air Transport, Inc., be authorized to engage in air transportation for a period of 3 years: (a) between the terminal points Covington, Ky., and Middlesboro, Ky., via the intermediate points Portsmouth, Ohio (alternate Maysville, Ky.), Ashland, Ky., Huntington, and Williamson, W. Va., Pikeville, Hazard, and Harlan, Ky.; (b) between the terminal points, Covington, Ky.-Cincinnati, Ohio and Knoxville, Tenn., via the intermediate points Frankfort (alternate Lexington direct), Lexington, Danville, Somerset, London-Corbin, and Middlesboro, Ky.; (c) between the terminal points Paducah, Ky., and Covington, Ky., via the intermediate points Princeton, Madisonville, Ky., Evansville, Ind. (Henderson, Ky.), Owensboro, Louisville, Ky. (alternate Covington direct), and Frankfort, Ky.; (d) between the terminal points Huntington, W. Va., and Paducah, Ky., via the intermediate points Ashland, Lexington, Frankfort, Louisville, Elizabethtown, Glasgow (optional),

and Bowling Green, Ky.; Nashville, Tenn. (alternate Hopkinsville-Clarksville direct), Hopkinsville, Ky., and Clarksville, Tenn.; (e) between the terminal points Nashville, Tenn., and Memphis, Tenn., via the intermediate points Columbia, Jackson, and Dyersburg, Tenn.; (f) between the terminal points Huntington, W. Va. and Huntington, W. Va., via the intermediate points Charleston, Beckley, Bluefield, (Princeton), Welch, and Williamson, W. Va.; (g) between the terminal points St. Louis, Mo., and Nashville, Tenn., via the intermediate points Cape Girardeau, Mo., Paducah, Ky., and Hopkinsville-Clarksville, Ky./Tenn.

2. That Piedmont Aviation, Inc., be authorized to engage in air transportation for a period of 3 years from the terminal point Winston-Salem, N. C., via the intermediate points Greensboro-High Point, N. C., Reidsville, N. C., Danville, Va., Martinsville, Va., Roanoke, Va., and beyond Roanoke via (1) the intermediate points Lynchburg, Va., Charlottesville, Va., Richmond, Va., and Petersburg, Va., to the terminal point Norfolk, Va., and (2) via the intermediate points Covington-Clifton Forge, Va., Lexington, Va., Staunton, Va., Harrisonburg, Va., Winchester, Va., and Martinsburg, W. Va., to the terminal point, Washington, D. C.

3. That Southern Airways, Inc., be authorized to engage in air transportation for a period of 3 years: (a) between the terminal points Memphis, Tenn., and Charleston, S. C., via the intermediate points Corinth,

[R. 11769]

Miss., Muscle Shoals, Decatur, and Huntsville, Ala., Chattanooga, Tenn., Rome, and Toccoa, Ga., and Anderson, Greenville, Spartanburg, Greenwood,

Columbia, and Orangeburg, S. C.; (b) between the terminal points Atlanta, Ga., and Charlotte, N. C., via the intermediate points Gainesville and Athens, Ga., Anderson, Greenville, and Spartanburg, S. C., and Shelby and Gastonia, N. C.; (c) from the terminal point Jackson, Miss., via the intermediate points Meridian, Miss., Selma, Montgomery, and Opelika, Ala., Columbus and Macon, Ga., and beyond Macon via (1) the intermediate point Milledgeville, Ga., to the terminal point Augusta, Ga., and via (2) the intermediate points Dublin and Statesboro, Ga., to the terminal point Savannah, Ga.; (d) between the terminal points Memphis, Tenn., and Columbus, Ga., via the intermediate points Clarksdale, Greenville, Vicksburg, Jackson, Laurel, Hattiesburg, Gulfport-Biloxi, and Pascagoula, Miss., Mobile, Ala., Pensacola, Fla., Andalusia, Dothan, and Eufaula, Ala.; and (e) between the terminal points Memphis, Tenn., and Jacksonville, Fla., via the intermediate points Tupelo, Starkville, and Columbus, Miss., Tuscaloosa, Birmingham, Gadsden, and Anniston, Ala., Rome, Atlanta, Griffin, La Grange, and Columbus, Ga., and beyond Columbus via (1) Americus, Cordele, Tifton, and Waycross, Ga., and (2) Albany, Moultrie, and Valdosta, Ga.

4. That State Airlines, Inc., be authorized to engage in air transportation for a period of 3 years: (a) from the terminal point Louisville, Ky., via the intermediate points Lexington and Hazard, Ky., and Bristol, Va.-Tenn., and beyond Bristol via (1) Asheville, Hickory, Statesville, Charlotte, Rockingham-Hamlet, and Fayetteville, N. C., to the terminal point Wilmington, N. C., and (2) North Wilkesboro, Winston-Salem, Greensboro-High Point, Burlington, and Raleigh-Durham via (a) Wilson and Greenville, N. C., to the terminal point New Bern, N. C., and via (b) Goldsboro

and Kinston, N. C., to the terminal point New Bern, N. C., and beyond New Bern, a seasonal operation to Morehead City, N. C.; (b) between the terminal points Raleigh-Durham, N. C., and Columbia, S. C., via the intermediate points Fayetteville and Lumberton, N. C., and Florence and Sumter, S. C., and a seasonal operation to include Myrtle Beach, S. C., as an intermediate point between Lumberton, N. C., and Florence, S. C.; and (c) between the terminal points Raleigh-Durham, N. C., and Columbia, S. C., via the intermediate points Burlington, Greensboro-High Point, Winston-Salem, Salisbury, and Charlotte, N. C., and Rock Hill, Chester, and Camden, S. C.

[R. 11770]

5. That the certificate of American Airlines, Inc., for route No. 23 be amended (a) to include Richmond, Va., as an intermediate point between Washington, D. C., and Lynchburg, Va., and (b) to include Louisville, Ky., as an intermediate point between Knoxville and Nashville, Tenn.

6. That the certificate of Delta Air Lines, Inc., for route No. 54 be amended to include Chattanooga, Tenn., as an intermediate point between Knoxville, Tenn., and Atlanta, Ga.

7. That the certificate of Eastern Air Lines, Inc., for route No. 5 be amended (a) to include Anderson, S. C., and Athens-Gainesville, Ga., as intermediate points between Greenville, S. C., and Atlanta, Ga., and (b) to include Anniston-Gadsden, Ala., as an intermediate point between Atlanta, Ga., and Birmingham, Ala.; That the certificate of Eastern Air Lines, Inc., for route No. 6 be amended (a) to include Rocky Mount and Goldsboro, N. C., as intermediate points, alternate to Raleigh, between Richmond, Va., and Charleston, S. C., (b) to include Fayetteville as an inter-

mediate point between Raleigh, N. C., and Charleston, S. C., (c) to include Southern Pines-Pinehurst-Aberdeen, N. C., as an intermediate point between Raleigh, N. C., and Columbia, S. C., and (d) to include Augusta, Ga., as an intermediate point between Columbia, S. C., and Savannah, Ga.; That the certificate of Eastern Air Lines, Inc., for route No. 10 be amended to include Waycross, Ga., as an intermediate point between Macon, Ga., and Jacksonville, Fla.; That the certificate of Eastern Air Lines, Inc., for route No. 47 be amended (a) to include Ashland, Ky., as an intermediate point between Lexington-Frankfort, Ky., and Charleston, W. Va., and (b) to include Owensboro, Ky., as an intermediate point between Louisville, Ky., and Evansville, Ind.

That the certificate of Pennsylvania-Central Airlines Corporation, for route No. 55 be amended (a) to extend said route from Bristol, Va./Tenn., to Jacksonville, Fla., via Asheville, N. C., Greenville-Spartanburg, S. C., and Augusta, Savannah, and Brunswick, Ga., and (b) to extend said route from Birmingham, Ala., to Mobile, Ala.; That the certificate of Pennsylvania-Central Airlines Corporation, for route No. 51 be amended (a) to designate Hickory, N. C., as a permanent intermediate point, (b) to include Winston-Salem, N. C., as an intermediate point between Greensboro-High Point, N. C., and Hickory, N. C., (c) to include Charlotte, N. C., as an intermediate point between Winston-Salem and/or Greensboro-High Point, N. C., and Asheville, N. C., (d) to extend said route from Asheville, N. C., to Memphis, Tenn., via Chattanooga, Tenn., and (e) to extend said route from Winston-Salem and/or Greensboro-High Point, N. C., to Washington, D. C., via Danville, Lynchburg, and Charlottesville, Va.

[R. 11771]

9. That the certificate of Transcontinental & Western Air, Inc., for route No. 61 be amended to include Cumberland and Hagerstown, Md., as intermediate points between Morgantown, W. Va., and Washington, D. C.; that the certificate of Transcontinental & Western Air, Inc., for route No. 58 be amended to include Louisville, Ky. as an intermediate point between St. Louis, Mo., and Cincinnati, Ohio.

10. That the application of Southern Bus Lines should be deferred.

11. That the applications in all other respects should be denied.

* * * * * * * * * *

9. State Airlines, Inc., exceptions to the Examiners Report. Record Vol. 22.

[R. 11993]

BEFORE THE

CIVIL AERONAUTICS BOARD

DOCKETS NOS. 501 ET AL.

SOUTHEASTERN STATES CASE

EXCEPTIONS IN BEHALF OF STATE AIRLINES, INC., APPLICANT IN DOCKETS NOS. 1114, 1711, AND 1776, TO REPORT OF EXAMINERS ROSS I. NEWMANN AND CURTIS C. HENDERSON

Now comes State Airlines, Inc., hereinafter called State, applicant in Dockets Nos. 1114, 1711, and 1776, all of them embraced in the above-entitled proceeding, and files these its exceptions to the report rendered therein by Examiners Ross I. Newmann and Curtis C. Henderson under date of June 4, 1946. In support of the said exceptions it respectfully asserts:

OPENING STATEMENT

For a better understanding of what follows herein, we invite attention to the map appearing at page 87A of the Examiner's report and to the following description of our proposed routes, with the numbers assigned to them in our presentation and with the respective over-all distances **(Ex. STA-7)**:

1. Between the terminal points Morgantown, W. Va., and Jacksonville, Fla., with service at the intermediate points of Clarksburg and Elkins, W. Va., Covington-Clifton-Forge and Roanoke, Va., Greensboro, Winston-Salem, Salisbury, and Charlotte, N. C., Rock Hill and Columbia, S. C., and Savannah and Brunswick, Ga., 686 miles;

[R. 11994]

2. Between the terminal points Cincinnati, Ohio, and Norfolk, Va., with service at the intermediate points of Portsmouth, Ohio, Huntington, Charleston, Beckley, and Princeton-Bluefield, W. Va., and Roanoke, Lynchburg, Petersburg, and Richmond, Va., 541 miles;

3. Between the terminal points Louisville, Ky., and Wilmington, N. C., with service at the intermediate points of Knoxville, Tenn., and Asheville, Charlotte, Pinehurst-Southern Pines, and Fayetteville, N. C. 566 miles;

4. Between the terminal points Roanoke, Va., and Wilmington, N. C., with service at the intermediate points of Danville, Va. and Durham-Raleigh and Fayetteville, N. C., 252 miles;

5. Between the terminal points Norfolk, Va., and Louisville, Ky., with service at the intermediate points of Richmond, Petersburg, Lynchburg, and Roanoke, Va., Princeton-Bluefield, W. Va., and Lexington, Ky., 553 miles;

6. Between the terminal points Portsmouth, Ohio, and Jacksonville, Fla., with service at the intermediate points of Huntington, W. Va., Bristol, Va., Asheville, N. C., Greenville, Anderson, and Greenwood, S. C., and Augusta and Waycross, Ga., 635 miles;

7. Between the terminal points Louisville, Ky., and Wilmington, N. C., with service at the intermediate points of Lexington, Ky., Bristol, Va., and Winston-Salem,

Greensboro, Burlington, Durham-Raleigh, and Fayetteville, N. C., 564 miles;

8. Between the terminal points Cincinnati, Ohio, and Charleston, S. C., with service at the intermediate points of Lexington, Ky., Bristol, Va., Hickory and Charlotte, N. C., and Columbia, S. C., 522 miles;

9. Between the terminal points New Bern, N. C., and Chattanooga, Tenn., with service at the intermediate points of Goldsboro, Durham-Raleigh, and Charlotte, N.C., and Rock Hill, Spartanburg, and Greenville, S. C., 501 miles;

10. Between the terminal points Louisville, Ky., and Jacksonville, Fla., with service at the intermediate points of Knoxville, Tenn., Asheville, N. C., Greenville, Spartanburg, Columbia, and Orangeburg, S. C., and Savannah and Brunswick, Ga., 678 miles;

11. Between the terminal points Norfolk, Va., and Montgomery, Ala., with service at the intermediate points of Elizabeth City, Greenville, Goldsboro, and Fayetteville, N. C., Florence, Sumter, and Columbia, S. C., and Augusta, Macon, and Columbus, Ga., 717 miles; and

12. Between the terminal points Savannah, Ga., and Montgomery, Ala., with service at the intermediate points of Dublin, Macon, and Columbus, Ga., 325 miles.

[R. 11995]

The Examiners, however, have recommended at page 157 of their report that State be authorized to engage in air transportation, for a period of three years, *only*

(a) from the terminal point Louisville, Ky., via the intermediate points Lexington and Hazard, Ky., and Bristol, Va./Tenn., and beyond Bristol via (1) Asheville, Hickory, Statesville, Charlotte, Rockingham-Hamlet, and Fayetteville, N. C., to the terminal point Wilmington,

N. C., (2) North Wilkesboro, Winston-Salem, Greensboro-High Point, Burlington, and Raleigh-Durham, N. C. and beyond Raleigh-Durham via (a) Wilson and Greenville, N. C., to the terminal point New Bern, N. C., and via (b) Goldsboro and Kinston, N. C., to the terminal point New Bern, N. C., and beyond New Bern, a seasonal operation to Morehead City, N. C.; (b) between the terminal points Raleigh-Durham, N. C., and Columbia, S. C., via the intermediate points Fayetteville and Lumberton, N. C., and Florence and Sumter, S. C., and a seasonal operation to include Myrtle Beach, S. C., as an intermediate point between Lumberton, N. C., and Florence, S. C., and (c) between the terminal points Raleigh-Durham, N. C., and Columbia, S. C., via the intermediate points Burlington, Greensboro-High Point, Winston-Salem, Salisbury, and Charlotte, N. C., and Rock Hill, Chester, and Camden, S. C.

They then went on to conclude at page 159 that "the applications in all other respects should be denied." To this latter conclusion, so far as it affects State, to certain other recommendations of the Examiners (to which we shall refer specifically hereinafter) in which they have recommended that all or parts of the above-described routes proposed by State be assigned to other applicants, to their recommendations that operating authority be granted to other applicants in such measure or fashion as in substance and effect to deprive State of certain of the operating authority which it seeks, and to the underlying reasoning by which the Examiners support those conclusions and recommendations, we note our respectful exceptions.

EXCEPTION NO. I

The Examiners erred in denying the aforesaid applications of State to the extent they seek authority over and

[R. 11996]

above that recommended by the Examiners, they erred in

recommending that all or parts of the authority sought by State be granted to other applicants, they erred in recommending that operating authority be granted to other applicants which to all intents and purposes resulted in depriving State of certain of the authority sought in its aforesaid applications, and they erred in granting to other applicants and failing to grant to State certain authority, which, although not specifically sought by State, would, if granted to State rather than to other applicants, form a more logical part of the operating authority recommended by the Examiners for State.

EXCEPTION NO. II

Although seemingly recognizing (pages 89 and 92 of the report) that State proposes a splendidly integrated system of routes, the Examiners erred in failing to give effect to that recognition by translating it into recommended approval of the entire integrated system urged in our opening brief, or of the greater part of it.

EXCEPTION NO. III

Specifically, apropos of Exception No. II immediately above, the Examiners erred in failing to recommend additionally approval of State's proposed Route No. 2 (Cincinnati-Norfolk), Route No. 4 (Roanoke-Wilmington), and Route No. 5 (Louisville-Norfolk), all of which lend themselves ideally to integration with the routes recommended by the Examiners for operation by State.

EXCEPTION NO. IV

Further, in enlargement of Exception No. II hereinbefore, the Examiners erred in failing to recommend additionally approval of the portion of State's proposed Route No. 9

[R. 11997]

which extends from Charlotte, N. C., to Chattanooga, Tenn., via Rock Hill and Greenville, S. C., another route which

lends itself to integration with the routes recommended by the Examiners for operation by State.

EXCEPTION NO. V

In setting up the following "area" categories, the Examiners unconsciously made it difficult to do justice to various of the proposals by State which overlap the limits of the categories in question:

In view of the broad scope of this proceeding, the large number of applicants, and the many complex issues involved, it appears desirable to consider the various proposals in four categories, i.e., (1) local service in the Kentucky, Tennessee, West Virginia area, (2) local service in South Carolina, Mississippi, Alabama, and Georgia; (3) local service in the Carolinas, and Virginia, and (4) new and additional service proposed by presently certificated carriers.

EXCEPTION NO. VI

The Examiners erred in commenting at page 92 of their report that, "While the record shows a need for substantially all of the routes proposed by State, it is felt that portions of the proposed routes could be better integrated with the operations of other local or feeder air carriers than by authorizing one carrier to operate all of the required services."

EXCEPTION NO. VII

The Examiners erred in failing to include Knoxville, Tenn., and Southern Pines-Pinehurst, N. C., as intermediate points on the Louisville-Wilmington route recommended for operation by State.

EXCEPTION NO. VIII

The Examiners erred in failing to recommend that August, Ga., and Charleston, S. C., be added as coterminals

on the two routes recommended for operation by State between Raleigh-Durham, N. C., on the north, and Columbia, S. C. on the south.

[R. 11998]

EXCEPTION NO. IX

The Examiners erred in failing to name Cincinnati, Ohio, as a coterminal with Louisville, Ky., on the route recommended for operation by State between Louisville and Wilmington, N. C.

EXCEPTION NO. X

The examiners erred in failing to recommend that Louisville, Ky. (which they have recommended be made a point on American Airlines, Inc., Route No. 23), be not served by American Airlines, Inc., on the same flight with Richmond, Va. (which they have likewise recommended be made a point on American Airlines, Inc., Route No. 23), Lynchburg, Va., Roanoke, Va., or Bristol, Va.-Tenn.

EXCEPTION NO. XI

The Examiners erred in failing to recommend that Richmond, Va., be not served by American Airlines, Inc., on the same flight with Lynchburg, or Roanoke, Va.

EXCEPTION NO. XII

The Examiners erred in failing to recommend that Fayetteville, N. C. (recommended for inclusion on Eastern's Route No. 6), be not served on the same flight with Greensboro, N. C., Winston-Salem, N. C., or Columbia, S. C.

CONCLUSION

At the appointed time, a brief in support of the foregoing exceptions will be duly filed and served on all parties of record.

Respectfully submitted,

STATE AIRLINES, INC.,
Applicant,

By WILMER A. HILL,
Its attorney
[R. 11999]

Of counsel:
Ames, Hill & Ames,
Transportation Building,
Washington 6, D. C.

Dated at
238-241 Transportation Building,
Washington 6, D. C.
June 19, 1946

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in these proceedings, by mailing by first-class mail a copy thereof properly addressed to each other party.

Dated at Washington 6, D. C., this nineteenth day of June, 1946.

/s/ WILMER A. HILL

10. Piedmont Aviation, Inc., exceptions to the Examiners Report. Record Vol. 22.

[R. 11946]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

SOUTHEASTERN STATES CASE

EXCEPTIONS TO THE EXAMINERS' REPORT

Piedmont Aviation, Inc. files the following exceptions to the Report of Ross I. Newmann and Curtis C. Henderson, Examiners:

1.

The Examiners erred in failing to recommend that Piedmont Aviation, Inc. be granted a route from Winston-Salem southwardly to Columbia by way of Statesville, Charlotte, Rock Hill, Chester and Camden.

2.

The Examiners erred in recommending for State Airlines, Inc. a route from Winston-Salem southwardly to Columbia by way of Salisbury, Charlotte, Rock Hill, Chester and Camden.

3.

The Examiners erred in not recommending that Piedmont Aviation, Inc. be granted a route from Wilmington to Knox-

I

[R. 11947]

ville by way of Fayetteville, Rockingham-Hamlet, Charlotte, Gastonia, Shelby and Asheville-Hendersonville.

4.

The Examiners erred in recommending that State Airlines, Inc. be granted a route from Wilmington to Asheville by way of Fayetteville, Rockingham-Hamlet, Charlotte, Statesville and Hickory.

5.

The Examiners erred in recommending against any airmail pickup routes and in failing to grant to Piedmont Aviation, Inc. the airmail pickup routes requested in its application.

Respectfully submitted,

Piedmont Aviation, Inc.,

By /s/ T. H. DAVIS
Thomas H. Davis, President
Smith Reynolds Airport
Winston-Salem, N. C.

W. P. Sandridge
Womble, Carlyle, Martin & Sandridge
Wachovia Bank Building
Winston-Salem, N. C.
Attorneys for Applicant

II

II. Public Counsel's exceptions to the Examiners Report. Record Vol. 22.

[R. 11831]

III.

Exception is taken to recommendation No. 4 of the Examiners relating to routes recommended for State Airlines, Inc., for local services in the Carolinas and Virginia and for services connecting those areas with the Kentucky area west of the Appalachian Mountains. We take no exception to the selection of State Airlines, Inc., but we take exception to the routes recommended to be operated by State in that they do not correspond with the principal traffic flows, and would provide uneconomic, wasteful and excessive local service which could not be operated on a profitable basis. The principal local traffic needs of cities in the Carolinas are in an east-west direction, and there is in addition a need for a one-carrier direct service between Cincinnati, Ohio and Norfolk, Va., and between Cincinnati and the Piedmont section of the Carolinas. These needs will not be served by the routes recommended by the Examiners.

Exception is taken to the selection of Hazard, Ky., Rockingham-Hamlet, N. C., and North Wilkesboro, N. C., as intermediate points to be served by State, inasmuch as such

[R. 11832]

towns are too small and would afford insufficient traffic potential to warrant their inclusion. Exception is taken to the selection of New Bern, N. C., as a co-terminal of one of the proposed routes, since it is not the natural or logical terminal and is of insufficient size and traffic potential. Exception is taken to the recommended routes between Charlotte, N. C., and Columbia, S. C., in that they do not correspond with the natural traffic flow and would afford insufficient traffic potential to make such routes profitable or economically self-sustaining. In our opinion the route should combine local feeder service within the Piedmont area with service connect-

ing that area and Louisville and Cincinnati to the west of the Appalachian Mountains. The local needs of the territory between Cincinnati and Huntington, W. Va., will be amply taken care of by the local route recommended for Commonwealth Air Transport, Inc., between those cities.

We therefore submit that a route to be flown by State Airlines in the proposed area should have as its western co-terminals the cities of Louisville, Ky., and Cincinnati, Ohio, and as its eastern terminals the cities of Norfolk, Va., and Charlotte, N. C. The route should run from Louisville and Cincinnati as co-terminals in the west via Lexington-Frankfort, Ky., and Princeton-Bluefield, W. Va., to Roanoke, Va., branching at Roanoke into two branches, the northerly leg serving Lynchburg, Richmond, Petersburg, Va., to Norfolk, Va., as the eastern terminal, and the southerly leg serving Danville, Va., Reidsville, Greensboro-High Point, Burlington, Raleigh-Durham, Goldsboro, Kinston, New Bern, Morehead City, Wilmington, Fayetteville, N. C., Florence, Columbia, S. C., to Charlotte, N. C., as a terminal. Such a route would [R. 11833] have strong eastern and western terminals, and would adequately serve the cities of the Carolinas in the way of local service primarily in an east-west direction, and would also give needed service from the Piedmont to Louisville and Cincinnati.

IV.

Exception is taken to the route recommended for Piedmont Aviation, Inc., (1) in that Winston-Salem, N. C., was named by the Examiners as the southern terminal instead of Charlotte, N. C., and (2) insofar as it would serve beyond Roanoke, Va., the intermediate points Lynchburg, Charlottesville, Richmond, and Petersburg, Va., and the terminal point Norfolk, Va., and (3) insofar as it omits Lynchburg and Charlottesville, Va., as intermediate points between Charlotte, N. C., and Washington, D. C.; for the reason that the

route as recommended by the Examiner does not correspond with the natural or logical traffic flows on the recommended route. In our opinion the local traffic between Roanoke, Va., in an easterly direction to Norfolk would be more properly served on a route between Louisville and Cincinnati on the west and Norfolk on the east on the route suggested by Public Counsel to be operated by State Airlines. The route to be flown by Piedmont should be in a north-south direction with Charlotte, N. C., as the southern terminal and Washington, D. C., as the northern terminal, and should serve the cities of Salisbury, Winston-Salem, Greensboro-High Point, Reidsville, N. C., Danville, Martinsville, Roanoke, Lynchburg, Lexington, Charlottesville, Staunton, Harrisonburg, and Winchester, Va. The cities of Covington-Clifton Forge, Va., could be more economically and feasibly furnished

[R. 11834]

through the nearby city of Lexington, Va., and the city of Martinsburg, W. Va., has its greatest community of interest with the Maryland cities of Hagerstown, Cumberland, and Frederick and should more properly be certificated on a feeder route to be established in the Middle Atlantic States Case.

The route to be flown by Piedmont Aviation, Inc., should be restricted to local service between Washington, D. C., and the cities of Virginia and North Carolina lying to the south of Washington, D. C., as far as Charlotte, N. C. Such a route would afford logical and feasible connections with the route recommended by Public Counsel for State Airlines, and would provide an integrated service between Washington, D. C., and the Piedmont cities of Virginia and North Carolina, and furnish such service primarily in a north-south direction. With State Airlines, Inc., furnishing a local service primarily in an east-west direction, connections at Roanoke, Va., could be furnished so as to take care of all the traffic needs of the Virginia and North Carolina cities east to Norfolk, west to Cincinnati and Louisville, north to Washington, D. C., and south to Charlotte, N. C.

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12. Piedmont Aviation, Inc., brief to the Board in support of and upon exceptions to the Examiners Report. Record Vol. 28.

[R. 15904]

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

In the matter of the applications for certificates of public convenience and necessity and for amendments of certificates under section 401 of the Civil Aeronautics Act of 1938, as amended.	Docket No. 501 et al.

BRIEF OF PIEDMONT AVIATION, INC., IN SUPPORT OF AND UPON EXCEPTIONS TO THE REPORT OF EXAMINERS ROSS I. NEWMANN AND CURTISS C. HENDERSON.

INTRODUCTORY STATEMENT

A. THERE IS A NEED FOR LOCAL SERVICE.

Among the major issues before the Examiners of the Southeastern States' case was the need for new local or feeder service within the area under consideration.

As the Examiners have so aptly stated, "the record is replete with evidence on the shortcomings of rail and highway transportation in the Southeastern area. This evidence shows the lack of sufficient main arteries of traffic in an east-west direction, the slow and circuitous character of many of the

existing traffic channels, and the absence of fast and convenient schedules on some rail and bus lines having through service." (Report 5). The lack of adequate surface transportation in the area south of Washington, north of Atlanta, and east of Knoxville, has resulted in the rapid growth of numerous smaller communities scattered irregularly throughout the area. Instead of being bottled up in a few larger

[R. 15905]

metropolitan areas, the tremendously important agricultural and industrial activities in this area are so scattered that nothing but air transportation of a local or feeder nature can adequately furnish the required service. The volumes of evidence supporting the need for direct air service to all of the points recommended for service by the Examiners is so complete that no further discussion in this respect is necessary.

B. THERE IS A NEED FOR PIEDMONT AVIATION, INC., TO PROVIDE THIS LOCAL SERVICE.

After finding the need for local service, the Examiners were then faced with another major issue—that of the selection of the carriers to provide this new service so desperately needed.

In addition to the presently certificated trunk-line operators participating in this proceeding, there are fifteen (15) uncertificated applicants, all of whom request certificates for the operation of local-feeder type service.

The Board has pointed out that whether air service to smaller communities or service for relatively short distance can be maintained on an economically sound basis is a matter which can only be established through experience. The need for the service has been proven. Now remains the selection of a carrier with sufficient experience and ability to make a success of this new experiment over a very short period of time.

Seldom does the Board have the opportunity of selecting a new carrier who is so well qualified for such an undertaking as is Piedmont Aviation, Inc. (Hereinafter referred

to as Piedmont). The record speaks for itself. In a comparatively short period of time, Piedmont has grown from an organization of only six (6) employees to one of the largest and most active organizations of its kind in the country. In the operation of pilot training schools under Government contract, Piedmont flew the equivalent of 3,200,000 miles (PI 4) without a single serious injury to pilot or passenger. This in itself is sufficient evidence of the capabilities of the personnel who will be responsible for the operation of Pied-

[R. 15906]

mont's proposed scheduled air service. Thus, the statement of the Examiners to the effect that "THERE CAN BE NO DOUBT FROM THE EXPERIENCE AND SUCCESSFUL RECORD OF PIEDMONT THAT THIS APPLICANT HAS THE ABILITY, FACILITIES, KEY PERSONNEL, AND "KNOW-HOW" TO PROPERLY PERFORM THE OPERATION WHICH HAS HERETOFORE BEEN FOUND REQUIRED BY THE PUBLIC CONVENIENCE AND NECESSITY" (Report 94), is a statement that must apply to any applicant in order to insure the best results from the experiment. With the possible exception of Southern Airways, no new applicant for a certificate to operate routes within the Piedmont area can support the findings of this statement, this all important fact.

The need for a carrier with experience who has the ABILITY, FACILITIES, KEY PERSONNEL AND "KNOW-HOW" is equally as important as the need for the service to be performed. To get the most out of the feeder experiment, Piedmont is needed to provide local-feeder service in the Piedmont and South Atlantic areas.

I. THE EXAMINERS WERE CORRECT IN RECOMMENDING THAT PIEDMONT BE AWARDED A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BETWEEN:

a. WINSTON-SALEM, NORTH CAROLINA, AND ROANOKE, VIRGINIA, via the intermediate points of Greensboro-High Point, North Carolina, Reidsville, North Carolina; Danville Virginia; and Martinsville, Virginia.

The communities along this route are some of the most important agricultural and industrial centers in the South. They all have a very strong community of interest with each other and demand an outlet to all sections of the country. They are so dependent on each other that AIR SERVICE OF A SKIP-STOP NATURE AFFORDED BY TRUNK-LINE CARRIERS IS OF LITTLE VALUE to them. Their dependency on the larger metropolitan areas is of such extent that ONE SCHEDULE A DAY EACH WAY IS ALSO OF LITTLE VALUE TO THEM. Each must have frequent local service economically available only through the establishment of a strictly local feeder air service affording rapid transportation between the communities themselves and connecting them with important terminals for trunk-line service to all the nation. This is the type of service proposed by Piedmont.

[R. 15907]

This route, only 139 miles in length, has a station population of 151,030, excluding terminals or a route mile population of 1,087. All of the points on this route now have airport facilities. The terminals are both equipped with radio ranges at class four airports or larger.

b. ROANOKE, VIRGINIA, AND WASHINGTON, D. C., via the intermediate points Covington-Clifton Forge, Virginia; Lexington, Virginia; Staunton, Virginia; Harrisonburg, Virginia; Winchester, Virginia; and Martinsburg, West Virginia.

This, the Shenandoah Valley route, has always been neglected transportation-wise insofar as getting into, out of, and from point to point within this vast fertile tourist attracting valley.

A study conducted by the United States National Park Service, Department of the Interior, shows that the Shenandoah National Park ranks FIRST AMONG ALL OF THE NATIONAL PARKS OF THE UNITED STATES, insofar as popularity is concerned. During the years 1937 through 1941, the Shenandoah enjoyed an average number of visitors of 982,685 (PI-54).

The pilot personnel of Piedmont has had many years of experience flying up and down this valley, perhaps more than any other single organization. Since the beginning of the company, Piedmont pilots have been delivering new aircraft from a manufacturer in Pennsylvania, through this valley to Winston-Salem. Even today, an average of 20 to 30 flights are made over this route each month. During the period of the National Emergency, Piedmont pilots flew many hundreds of hours over this route training service pilots in the art of safe cross-country flying.

By natural barriers the people residing along this route have always been cut off from the normal transportation outlets afforded most communities. Surface transportation facilities have not been capable of providing them with convenient service to the closest two transportation centers of any size, namely, Roanoke, Virginia, and Washington, D. C., principally because of these natural barriers. Here again, there is no doubt that there is a need for the service and that Piedmont is best qualified to provide this service.

[R. 15908]

c. ROANOKE, VIRGINIA, AND NORFOLK, VIRGINIA, via the intermediate points of Lynchburg, Charlottesville, Richmond and Petersburg, Virginia: This particular route is only 275 miles long, having two important terminals between which is located four intermediate points. All of these intermediate points are in such great need of new or additional air service that none should be neglected. THE CHARACTERISTICS OF SUCH A ROUTE ARE NOT CONDUSIVE TO TRUNK-LINE OPERATION. A skip-stop schedule once a day each way will be of little value to any of the points along this route. There is only one other type of service that will fulfill the needs of the communities along this route and provide the required connection between the two terminals, and that is a strictly local-feeder service. It would certainly not be in the public interest to certificate a route of such characteristics to a trunk-line carrier. Whether the trunk-line carrier provided local service or whether it by-passed most of the intermediate

points, in either event TRUNK-LINE OPERATION OVER THIS ROUTE WOULD BE AN ECONOMIC BURDEN.

While all of the points on the recommended route between Norfolk and Roanoke are of such importance that they cannot be deprived of air transportation service, their strong community of interest with each other is so great that local service must be provided. Frequent schedules are also necessary in order to provide convenient connections with trunk-line carriers at Norfolk, Richmond and Roanoke, Virginia.

The Examiners of the Great Lakes-Florida case (Docket 570 et al) recognized that "it is quite possible that service over the Charleston-Norfolk segment of the Cincinnati-Norfolk route might be in the public interest IF LIMITED TO A LOCAL FEEDER TYPE OF OPERATION using small capacity equipment and authorized on a temporary basis." As a result of the Examiners recommendation and the Board's decision, a route between Roanoke and Charleston was granted to a trunk-line carrier in the Great Lakes-Florida case. There is nothing in the record to support the finding that now there [R. 15909] is need for still another carrier between Roanoke and Charleston, particularly since there are not now sufficient intermediate points to warrant the inauguration of a local service between these two points. It doesn't take very much sound reasoning to see that local feeder service is the only type of service that can adequately provide the benefits of air transportation to the towns and cities along this route at a reasonable cost to the Government.

II. THE EXAMINERS ERRED IN FAILING TO RECOMMEND THAT PIEDMONT BE GRANTED A ROUTE BETWEEN WINSTON-SALEM, NORTH CAROLINA, AND COLUMBIA, SOUTH CAROLINA.

This route, as recommended by the Examiners, is exactly the same as that applied for by Piedmont, except for the elimination of Concord, North Carolina (one of the largest textile centers in the world), and Lancaster, South Carolina.

State Air Lines, (hereinafter referred to as State), however, proposes to serve only two new intermediate points along this route—Salisbury, North Carolina, and Rock Hill, South Carolina. This is indicative of Piedmont's knowledge of the needs of this route and its willingness to provide the needed service. It is also indicative of State's apparent ignorance of the need for local service in the area and its lack of interest in providing the type of service found by the Examiners to be in the public interest.

The whole plan of operation of Piedmont is based on the need for local service in the area under consideration. Piedmont's familiarity with the territory and its transportation problems inspired its interest in providing local scheduled service since the organization of the company. The Examiners, in finding that there is a need for local service between Winston-Salem and Columbia, failed to recommend that Piedmont provide the service by ignoring the fact that STATE HAS LITTLE APPARENT INTEREST IN LOCAL-FEEDER OPERATION.

Eastern Air Lines is presently certificated between Winston-Salem, North Carolina, and Columbia, South Carolina, with one intermediate stop at Charlotte. As pointed out [R. 15910] previously, State's proposal would add only two intermediate points to this route, one of which having a population of only 15,009, the other only 19,037.

With but few exceptions, this particular route shows a higher traffic potential for a strictly local feeder type of operation than any other route under consideration in this proceeding.

This route is in the heart of an area to which Piedmont has been offering varied services for many years including charter service, aircraft sales, aeronautical parts and material distribution. In addition, Piedmont pilots have flown over this route many hundreds of hours giving cross-country training to service pilots. Flight log excerpts of only four Piedmont pilots show fifty-five training flights between Winston-Salem and Columbia alone (PI-7). There is no doubt

that Piedmont is better qualified to provide this local service between Winston-Salem and Columbia than any other applicant in this proceeding.

The Examiners have recommended that State provide service to Hickory and Statesville, North Carolina, on a route between Asheville and Charlotte. A GREAT AMOUNT OF WASTEFUL DUPLICATION OF EXISTING SERVICE COULD BE AVOIDED BY THE CERTIFICATION OF PIEDMONT TO SERVE STATESVILLE ON ITS WINSTON-SALEM-COLUMBIA ROUTE, rather than tieing it in with Hickory and Asheville with which Statesville has little, if any, community of interest.

III. THE EXAMINERS ERRED IN FAILING TO RECOMMEND THAT PIEDMONT BE GRANTED A ROUTE BETWEEN WILMINGTON, NORTH CAROLINA, AND KNOXVILLE, TENNESSEE, via the intermediate points of Lumberton and/or Fayetteville, Pinehurst-Southern Pines, Rockingham-Hamlet, Wadesboro, Monroe, Charlotte, Gastonia, Shelby and Asheville-Hendersonville.

Here again is a good example of Piedmont's interest in providing local service as against the establishment of a trunk-line system in disguise over a local-feeder route. State Air Lines proposes to serve only two new points over this

[R. 15911]

route which has so many important communities which need and can support local air service. As against State's two new points, Piedmont proposes to serve seven new points with practically no increase in total route miles.

West of Charlotte on this route, Piedmont has applied for permission to serve Shelby and Gastonia. The Examiners have recommended that Shelby and Gastonia be included on a route connecting them with Greenville-Spartanburg to the south and Charlotte to the east. We submit that SHELBY AND GASTONIA ARE IN MUCH GREATER NEED FOR LOCAL AIR LINE CONNECTIONS TO ASHEVILLE AND KNOXVILLE TO THE WEST THAN THEY ARE TO GREENVILLE-SPARTANBURG TO THE SOUTH.

They are likewise in greater need for service to Asheville and Knoxville than is Hickory (which already has service east and west) or Statesville. By such an arrangement, what little interest Statesville does have with Hickory or Asheville would still have convenient connections through either Winston-Salem or Charlotte.

Every provision should be made for satisfactory local service between Charlotte and Knoxville. The same should be done and has been recommended between Louisville and Knoxville. However, a trunk-line service of the type proposed by Delta Air Lines would more adequately take care of Charlotte's through traffic to Louisville, Cincinnati and beyond, rather than the trunk-line in disguise as a feeder line proposed by State between Charlotte and Louisville.

There is nothing in the record to indicate that Piedmont has ever had any intentions of providing anything but local-feeder service. Compare this with the many indications of record which show conclusively that State's interest is principally in the operation of a trunk-line system. State proposes to use DC3 equipment and further PROPOSES INTERCHANGE OF EQUIPMENT WITH OTHER TRUNK-LINE CARRIERS AT TERMINALS (STA-G, page 8). Within the states of Virginia, North and South Carolina, State's judgment, as a result of their exhaustive studies, has induced them to propose service to only fourteen new points, whereas PIEDMONT PROPOSES SERVICE TO TWENTY-FOUR NEW POINTS WITHIN THE SAME AREA.

[R. 15912]

The same vast amount of operating experience of Piedmont applying to other routes sought in this proceeding apply to the Wilmington-Knoxville route also. Piedmont's operating experience and familiarity with the people and the territory under consideration is unsurpassed by any uncertificated applicant in this proceeding.

IV. THE EXAMINERS ERRED IN FAILING TO RECOMMEND ANY AIRMAIL PICK-UP ROUTES, AS REQUESTED IN THE APPLICATION OF PIEDMONT AVIATION.

The success of airmail pick-up system has long since been proven by the operations of All American Aviation. The hundreds of small manufacturing and agricultural centers scattered irregularly throughout the Piedmont and South Atlantic areas tend to render airmail and express pick-up service as being more in the public interest within this area than it is in the territory covered by route #49.

Piedmont's fitness, willingness and ability gained from EXPERIENCE renders it most capable of operating pick-up service in addition to its mail passenger and express proposals. Certainly, if there are to be any mail pick-up operations at all, there should be at least two different organizations providing such service to insure full protection of the public. The advantage of a comparison of operating cost should and would then be made available to the Board.

The Board has seen fit to certificate operations combining the airmail pick-up system with passenger operations. This indeed is commendable action on the part of the Board. Ultimately without question, combination service will supplement strictly pick-up operation and perhaps all local-feeder passenger operations will eventually put into effect the combined service.

Piedmont's original application requested a certificate to provide combination pick-up and passenger service; however, after further study and consideration, the application was amended to provide for separate airmail pick-up routes and local mail, passenger and express routes. By reason of the fact that there has been practically no experience in the operation of a pick-up system with passengers aboard, it was

[R. 15913]

felt that such an undertaking could more safely and advantageously be undertaken after a carrier had operated these two services separately for a period of time sufficient to insure without doubt the feasibility of conducting the combined

services. The certification of Piedmont for airmail pick-up operations in addition to its mail, passenger and express operations would certainly be a logical step in the direction of perfecting local feeder air service at reasonable cost to the Government without assuming any unnecessary risks insofar as safety is concerned.

V. CONCLUSION.

a. The service proposed by Piedmont Aviation, Incorporated, is required by the public convenience and necessity.

b. Piedmont is more capable of operating the proposed routes than any other feeder applicant for routes in the same area.

c. Piedmont Aviation will not take needed revenue from existing carriers and by the very nature of its proposed system will not be in a position to offer competitive service with trunk-line operators on terminal to terminal traffic.

d. Piedmont Aviation will greatly increase the revenue of presently certificated carriers by connecting them with a large traffic potential heretofore unserved.

e. Piedmont Aviation has the equipment and facilities presently available, with the exception of aircraft, for use in conducting the proposed service.

f. Piedmont Aviation can perform the service proposed at reasonable cost to the Government.

We request the privilege of oral argument before the Board. Respectfully submitted.

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Winston-Salem, N. C.
(Attorneys for Piedmont Aviation, Inc.)

July 29, 1946

13. Public Counsel Brief to the Board in Support of and Upon Exceptions to the Examiner's Report. Record, Vol. 28.

[R. 15387]

APPENDIX A

Routes Recommended by Public Counsel in the Southeastern States Case, Docket No. 501 et al.

A. Piedmont Aviation, Inc.

1. Charlotte, N. C. to Washington, D. C. via Salisbury, N. C. Winston-Salem, Greensboro-High Point, Reidville, Danville, Martinsville, Roanoke, Lynchburg, Lexington, Va., Charlottesville, Va., Staunton, Va., Harrisonburg, Va. and Winchester, Va.

B. Commonwealth Air Transport, Inc.

1. Covington, Ky. (Cin.) to Knoxville, Tenn. via Frankfort, Lexington, Danville, Somerset, Corbin and Middlesboro, Ky.

2. Covington, Ky. (Cin.) to Paducah, Ky. via Frankfort, Louisville, Owensboro, Evansville, Madisonville and Princeton, Ky.

3. Huntington, W. Va. to Nashville, Tenn. via Lexington, Ky., Frankfort, Louisville, Elizabethtown, Glasgow, and Bowling Green, Ky.

4. St. Louis, Mo. to Nashville, Tenn. via Cape Girardeau, Mo., Paducah and Hopkinsville, Ky.

C. Southern Airways, Inc.

1. Memphis, Tenn. to Jacksonville, Fla. via Tupelo, Miss., Columbus, Tuscaloosa, Ala. Birmingham, Gadsden, Anniston, Ala. Atlanta, La Grande, Columbus, Americus, Albany, Moultrie, Thomasville and Valdosta, Ga.

[R. 15388]

2. Jackson, Miss. to Savannah, Ga. via Meridian, Miss. Selma, Ala. Montgomery, Ala. Opelika-Auburn, Ala., Columbus, Ga. Macon, Dublin and Statesboro, Ga.

3. Atlanta, Ga. to Charleston, S. C. via Gainesville, Ga. Athens, Anderson, S. C., Greenville-Spartanburg, Greenwood, Columbia, Sumter, Florence, and Georgetown, S. C.

D. State Airline, Inc.

1. Covington, Ky. (Cin.) and Louisville, Ky. as coterminals to Wilmington, N. C. via Lexington, Ky., Hazard, Ky. Bristol, Va. Hickory, N. C., Charlotte, N. C. Southern Pines-Pinehurst-Aberdeen, N. C. and Fayetteville, N. C.

2. Covington, Ky. (Cin.) and Louisville, Ky. as coterminals to Roanoke, Va. via Lexington, Ky. Princeton-Bluefield, W. Va. and beyond Roanoke, Va. (a) to Norfolk, Va. via Lynchburg, Richmond and Petersburg, Va. and (b) to New Bern, N. C. via Danville, Greensboro-High Point, Burlington, Durham-Raleigh, Goldsboro and Kinston, N. C.

E. Pennsylvania Central Airlines, Inc.

1. Extension of Route 51 from its present terminal at Knoxville, Tenn. to a new terminal at Memphis, Tenn. via Chattanooga, Tenn. and certification of Charlotte, Hickory, and Winston-Salem, N. C. as intermediate stops.

2. Extension of Route 51 from Birmingham, Ala. to Mobile, Ala.

[R. 15389]

F. Eastern Airlines, Inc.

1. Certification of Southern Pines-Pinehurst-Aberdeen, N. C. and Augusta, Ga. on Route 6.

2. Certification of Rome and Waycross, Ga. to Route 10.

14. Extracts of Oral Argument Before the Board by Counsel for State Airlines, Inc., Piedmont Aviation, Inc., and Public Counsel. Record Vol. 27.

Oral Argument of Mr. Wilmer A. Hill for State Airlines, Inc.

[R. 14989]

Mr. Branch: Mr. Hill, I am just wondering whether this map is intended to indicate all of the points which you propose to serve on these various routes, and for instance, you have quite a number of cities, small cities, or larger cities, shown, usually pretty close to the route, but apparently to be served by the route. I will tell you what bothers me. Taking these routes, and running through them, it would seem that you simply hit the high spots, the live cities. I wondered if this was an accurate portrait of all of what you propose to serve.

Mr. Hill: I meant to explain. Those that do no sit on the lines are points which are embraced in the scope of this proceeding, and which we could and would be willing to serve if the Board should choose to assign them to us. We have a catchall clause in our application, and we are quite willing to serve those points if the Board should feel that the public interest required that service. The points that are actually on the routes are the ones which we definitely did propose to serve.

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Oral Argument Before the Board of Mr. W. P. Sandridge for Piedmont Aviation, Inc.

[R. 14855]

Piedmont's certification of incorporation expressly contemplated certificated scheduled passenger service. The war necessarily postponed the realization of that plan. Piedmont has proposed no hit or miss plan.

Before laying out its proposed route, it retained the services of Dr. C. K. Brown of Davidson College, who is characterized as an economist of recognized authority in transportation matters, to make an economic survey of the South-Atlantic, to which Piedmont and all its personnel are natives.

On the basis of that survey, Piedmont's routes were
[R. 14856]
planned. These proposed routes were submitted back to Dr. Brown and revised in the light of suggestions offered by him.

The economic concept back of our plan is this. Between Washington on the north, and Atlanta on the south, there are two primary trading points, Charlotte and Richmond. Neither of these primary trading points completely dominate its respective trading areas in the sense that Atlanta dominates her area.

Around Charlotte, notably, there are several secondary trading areas. For example, Winston-Salem and Greensboro are important secondary trading areas to Charlotte.

In North Carolina, particularly, there are many cities of respectable size and importance having a community of interest between themselves and with their primary trading area.

Another concept back of our plan is this. The Civil Aeronautics Board with the certification of local feeder lines is taking the second and logical step in developing the air transportation system of this country.

The first step was to establish the skeleton of that system with the long-haul trunk line. The second step is to fill in that skeleton was the short-haul and feeder lines. The trunk lines should have no fear of this second step if the local and feeder lines are actually local and actually feed into the trunk lines.

There can be no question about Piedmont's proposal being a truly local proposal. The average distance between the stop recommended for us by the Examiners is only 40.9
[R. 14857]
miles. And the average distance between the stops proposed by us is even less.

Another consideration necessarily affecting our plan is the geography of the area, notably the Blue Ridge Mountains. With these considerations in mind, we turn to an examination of Piedmont's proposed routes. I don't have maps to hand around, but they are set forth in the Examiners' report. They are preceding the discussion of Piedmont.

I would like to discuss first the proposed route from Columbia, South Carolina, to Winston Salem, and from Winston Salem to Washington.

The Examiners have recommended Piedmont from Winston Salem northwardly through the Shennandoah Valley to Washington.

Public counsel have concurred in this recommendation with minor changes, but say the route should be extended southwardly, at least to Charlotte, and they add that it could very well be extended to Columbia.

We find ourselves in complete agreement with the position of Public Counsel. This route should certainly reach Charlotte, because that is the primary trading area. Any system that purports to serve a trading area should certainly reach that trading area.

If Charlotte is the center of the area as it undoubtedly is, then it should be served from the south, that is, Columbia to Charlotte, as well as the north.

Both the Examiner and Public Counsel have recognized the need for feeder lines from Columbia to Charlotte, as we planned it, but have recommended State for this service,

[R. 14858]

although State did not request it except as virtually a trunk line operation. State proposed only one stop between Columbia and Charlotte. The Examiners doubtless chopped off the segment of our proposal south of Charlotte because of their self-imposed compartmental theory of regarding Virginia and North Carolina as one area and South Carolina, Georgia and Mississippi, and Alabama as the other.

Consider how this route as proposed by Piedmont connects Charlotte with its secondary centers, both north and south, and how north of Winston Salem it follows the Shennandoah Valley, crossing the Blue Ridge Mountains at only one point, the southernmost end of those mountains where they are very low.

Consider also that this route forms a convenient junction at Roanoke for local services to Norfolk within the State of Virginia.

Now the only other applicant for this route from Winston Salem to Washington by way of the Shennandoah Valley is Virginia Stage Lines, a surface bus carriers, whose supposed air line division is called Virginia Air Lines.

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[R. 14862]

Coming back to the Norfolk-Roanoke route, the Board will see that Piedmont's proposal connects the principal Virginia cities with each other and with their primary trading center, Richmond.

It will also be observed that this proposal feeds local passengers to American at Lynchburg and Roanoke, and to Eastern at Richmond and Roanoke, and to National and PCA at Norfolk. It is truly a feeder service.

Piedmont would be glad to add Charleston to this route if the Board should think well of it, but we did not propose it because that seems to be a little out of the sphere of the primary local interests of those cities.

As to the Knoxville, Wilmington route, east-west, passing through Charlotte, Piedmont was not recommended for that route state-wide, with minor exceptions.

Piedmont proposed nine stops between Wilmington and Knoxville. State proposed four. The average distance between stops as proposed by Piedmont was 40 miles, as proposed by State was 80 miles—I speak approximately.

It is difficult to understand why State should have been chosen here over Piedmont. The route recommended by the Examiners more nearly approached the routes proposed by us. In addition, State has been recommended for another exceedingly desirable east-west route, characterized by some as a trunk line route. I characterize it as such. It is through

[R. 14863]

North Carolina.

It starts out at Louisville, Kentucky, goes to the Tri-Cities at Bristol, and then east-west through the very heart of North Carolina, Winston Salem, Greensboro, Burlington, Raleigh, and to the port of Moorehead City.

In toto, State has been recommended for approximately 1,800 miles while Piedmont has been recommended for only 678 miles.

We think Piedmont should be given the Wilmington-Knoxville route rather than State.

This brings me necessarily to a comparison of Piedmont and State. We do not understand that State contends that anybody in the organization has any considerable aeronautical experience except Mr. Gilbert.

The Examiners found that Mr. Gilbert, "has been actively engaged in transportation for the past 17 years."

The facts supporting this conclusion are found in the Examiners' report, page 88. They are stated to be first that in 1928, which was the beginning of the 17-year period, Mr. Gilbert served as an agent for the Atlantic-Pacific Stages, Inc., presumably a bus line; that for the 10-year period, '29 to '39, he held various positions with heavy duty automotive manufacturers, notably a wheel manufacturer.

It is difficult for me to understand how a manufacturer of wheels has any more bearing on one's ability concerning airplanes as a manufacturer of locomotives whistles, for example, would have.

And third, that since 1939 he has been president of State Air Lines.

[R. 14864]

Piedmont, like most other applicants, does not believe that these activities amount to the finding by the Examiners that Mr. Gilbert has been actively engaged in transportation for the past 17 years.

Now State conducted a charter service for two or three years. It was admittedly unprofitable and they have stopped it. Piedmont has conducted a charter service since its inception. It has made money on it. It is still running it. We are good business folk.

State has had, as the Examiners found, from four to sixteen employees; we have had from 62 to 130 employees. State has had no experience, or little or no experience in the maintenance of aircraft, overhaul of engines and so forth.

The Examiners found that at the time of this hearing, Piedmont was "one of the leading Civil Aeronautic Administration approved aircraft and engine overhaul stations in the southeast."

State has had little or no experience in flight instruction. We have been awarded contracts by the Government for primary, secondary, precision flying, cross-country flying, night flying.

It may be said here, that cross-country and precision flying instruction closely approximate the conditions of scheduled air line operations. And I may add that through all that period we have done that without any serious injury.

We have an insurance policy, and the only claim ever made on it was that one of the students in turning around wiped

[R. 14865]

the windshield wiper off a car nearby.

Mr. Tom Davis, president, is now a member of the North Carolina Aeronautics Commission. He holds the Commercial Pilot's license and is actively engaged in combined executive and actual flying duties with Piedmont, and has been with Piedmont and its predecessor since 1939. He was born in Winston Salem and has always lived there. It may be remarked that none of State's important personnel, so far as I know, none of them were born in this area and none of them have lived there except Mr. Gilbert who came to Charlotte in 1939 or '40.

We conclude that the chief qualification of State for certification is its persistence in demanding that it be left in the air game, some way, anyway; it is presently requesting a trunk line operation on some of the routes and proposes on all of its routes to use DC-3 equipment, which it is submitted is not suitable for truly local service, and which it may be added could not possibly operate at present in many of the airports which it proposes to serve.

I should not have thought it necessary to discuss the financial ability of Piedmont Aviation in view of the finding by both of the Examiners and public counsel that are fit, able and willing.

But we have been characterized by counsel for one of the prominent trunk lines as a shoestring operator. Our fitness and ability has already been discussed in other respects.

Now as a precaution against the possibility of creating

[R. 14866]

any ill feeling towards local feeder service, we determine from the start that we would finance our service by stock subscriptions direct with people who could afford to make and knew the chances they were taking, and that we would not float stock through a New York underwriter.

After all, a certificate granted for three years to an air line in the new type of service is not an investment, it is not an investment type of stock, it is a speculative stock, it is not the kind of thing that ought to be sold to a lot of people where safety is the primary consideration. We have accepted commitments, firm commitments, I may say, for our stock from such men as Commander Thurmond Chatham, the president of the Chatham Manufacturing Company, a large manufacturer of blankets, S. Clay Williams, the Chairman of the Board of the R. J. Reynolds Tobacco Company, E. L. Davis, president of the Security Life and Trust Company, from R. M. Hanes, president of the Bocovia Bank, the largest bank in the middle Atlantic between Washington and Atlanta, and other gentlemen of similar standing.

The resources of these gentlemen are not proper to mention here, but a prominent banker testified in this case that they were quite able to meet any commitments which they care to make.

The largest bank between Richmond and Atlanta has made a firm written commitment to us in the record to lend us the funds which, with the stock which we would sell, would be necessary to finance our original proposal, both the feeder lines, and air mail pick-up.

Now, another advantage to this method of financing, as

[R. 14867]

contrasted with the sale of stock through an underwriter, is that to the extent stock can be sold to influential local individuals in the territory to be served, the personal interests

of those stockholders is insured, their continuing interest is insured, and they will get us passengers and that is one thing we are vitally interested in.

* * * * * * * * * *

It is only possible to convey our hope and impress upon your minds that Piedmont is the type of a carrier to which this Board can entrust an admitted experiment, whose past record, whose study in proposing this thing which Your Honors are considering today, has been such as to guarantee to this Board that it will give to the operation, if certificated, the kind of attention which will insure a successful operation, if that is possible.

Now one thing more. You are only going to certificate us or somebody else for three years. We have been criticised for proposing one-engine plane service. We don't propose, if we get a three-year certificate, to spend a year or two years waiting around for equipment. We propose to use what comes to hand so long as that is consistent with the safety requirements of the Civil Aeronautics Administration.

We would rather use two-engine equipment, but if we can't get it, can't get the kind we want or if the airports which we serve can't serve the two-engine equipment, and some of them [R. 14868]

can't, then we propose to use what comes to hand and use it promptly.

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Rebuttal Argument of Mr. W. P. Sandridge.

[R. 15300]

Now, with respect to the Virginia State Lines, there is no question but that that company shows ample capital. But to our minds, the certification of a local or feeder applicant is an experiment.

Those of us who are committing our time and our effort and our money to this experiment know it as an experiment, and we are confident that it will prove a successful experiment.

[R. 15301]

But an experiment, whether it is scientific or economic, should be made under the best possible conditions, laboratory conditions, if possible; and if a certificate is granted to a surface bus carrier, I submit in all fairness that that is not an ideal laboratory condition under which to test the feasibility of a local route.

Now, on the other hand, Piedmont Aviation, it seems to us, does afford and present to this Board the type of a carrier that can be entrusted with the experiment, which is an important thing from the standpoint of the economic development of our country.

First of all, we are devoted solely to matters aeronautical. Second, as our name implies, we are natives to that area.

Now, that is not a consideration that determines anything, but it is important. This Board has given some consideration to it in other cases. And its importance to us seems to be a very practical one; that if our stockholders and our directors and our managers and our men who run this thing are in the area we serve, they are going to draw to it a local interest, and they are going to draw to it passengers which outsiders simply cannot get.

We think also this Board should take into consideration the business record of its applicants.

Now, Piedmont has a good business record. It has been in business since 1940, and it has been doing a good business. It has been successful. We are not a big crowd, but we employ from 62 to 132 people.

[R. 15302]

We have our shops. We are an improved overhauler of engines and craft. We have the "know-how" in that respect, at least, as far as keeping the equipment in good order is concerned.

And among the local applicants in this proceeding, we don't believe anybody has a better business record than we have. We think that is important.

Now, another thing that seems to us very important is this: That when you entrust this experiment to an applicant, the experiment entrusted to that applicant should not be more then the applicant can attend to with diligence. It should not bite off more than it can chew.

What we are proposing is rather modest. It is not a truck line operation. It is a purely local operation. It is a modest operation. It is integrated. It affords an opportunity for the higher utilization of our equipment. And that is important, if we are to make money, and if the Government is not to lose money by virtue of the experiment.

Now, one thing about the Norfolk-Roanoke segment of our route: There has been a great deal said about trunkline service between Cincinnati or Louisville, or both, and Norfolk.

Now, we are recommending from Roanoke to Norfolk, a part of that route. Of course, we would rather have the whole thing, but if this Board should see fit to certificate a trunk line operation there, we would still want this route for local service. And we would not have a partical of fear

[R. 15303]

of Eastern, for example, if they were granted trunk line service. We know that it is not in the cards for Eastern Air Lines or any other trunk line operator to afford good service between Lynchburg and Richmond, or Richmond and Petersburg, or Richmond and Norfolk, or Roanoke and Lynchburg.

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One more thing: Public Counsel, I am sure inadvertently, left the impression that the choice for the Wilmington-Knoxville route through Charlotte was narrowed by the fact that the only applicants for it were Seaboard and State.

Now, we are in there pitching for that route. It is a part of our plan. It is the crux of our plan. It is the east-west portion of our plan. Please don't overlook us.

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Argument of Mr. Merle P. Lyon.

[R. 15256]

I come now to the most crucial and difficult issue in the case, namely, the proper solution of what the record in this case indicates is the greatest unfilled air transportation need of the Piedmont section of the Carolinas and Virginia. I refer to east-west service from the Piedmont over the Appalachian Mountains to Louisville, Cincinnati, and Chicago, as well as local east-west service within the States of North Carolina and Virginia.

The decision in the Great Lakes to Florida case, beneficial to the Piedmont though it was by affording direct connections between Virginia and North Carolina cities Akron,

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Cleveland, and Detroit by Eastern Air Lines and between South Carolina and the Middle West by Delta Air Lines, left still unsatisfied the needs of the Virginia and North Carolina cities for direct air service to Cincinnati and Louisville, and for connections there with Chicago, St. Louis, and other important cities in the Middle West.

As public counsel view this case, therefore, the Board here has both the opportunity and the duty to fill in the air line pattern so as to provide direct air service for the first time between Louisville and Cincinnati on the one hand, and the important cities of Norfolk, New Bern, and Wilmington, on the other hand, and to afford direct service likewise between these cities and the major cities of Virginia and North Carolina.

The reasons leading to our choice of State Airlines to operate such service have been fully developed in our brief to the Board at pages 18 to 25, and lack of time prevents me from going into the matter at length.

Suffice it to say that the routes which would be required to fully provide the necessary service partake more of the nature of trunk lines than of feeder lines, although partly of both, but the choice of either Eastern or Delta, the only available trunkline applicants, proved to be impracticable on account of the local character of the routes necessary to pro-

vide the required east-west service within the State of North Carolina.

Our choice of State Airlines was admittedly a compromise between the trunkline service which would be afforded by Eastern or Delta, plus the purely local service which

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would be afforded by such well qualified new applicants as Seaboard Air Transport, Inc., or South East Airlines, Inc. So far as the Louisville-Cincinnati-Wilmington route is concerned, (and this route is clearly required by an overwhelming preponderance of evidence in this case), this service could well be afforded by a combination of, say, Delta Airlines from Cincinnati to Louisville to Knoxville, and there joining a local route to be operated by, say, Seaboard Air Transport, Inc., from Knoxville to Wilmington.

But in our judgment the public convenience and necessity would be better served by one complete through route from Cincinnati and Louisville as co-terminals on the west, to Wilmington, North Carolina, on the east, via Lexington and Hazard, Kentucky, Tri-Cities, Hickory, Charlotte, Southern Pines-Pinehurst-Aberdeen and Fayetteville, North Carolina. It seems that State Airlines is the only available candidate to operate such a route, since it alone among the feeder applicants proposes use of DC-3 equipment, and the route in part at least runs athwart the established routes of both Eastern and Delta.

We cannot understand the failure of the Examiners to recommend Cincinnati as a co-terminal of the route in addition to Louisville. In our opinion, Cincinnati is fully as important, if not more important, than Louisville to the Piedmont area, and to discriminate against Cincinnati in favor of Louisville is obviously unjust and unfair.

The intermediate points selected by the Examiners are different in some respects from those proposed by us, since

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the Examiners propose only one route from the West through the Piedmont, branching off at Tri-Cities into

a north and south leg, one ending at New Bern, North Carolina, and the other at Wilmington. If this is the only route to be established between Louisville and Cincinnati on the one hand, and Piedmont cities of North Carolina on the other, well and good. We would then have no quarrel with the route as selected by the Examiners, except that we doubt the practicality of serving all of the proposed cities with equipment the size of the DC-3.

Mr. Branch: You wanted to be notified at five minutes, and you have five minutes left.

Mr. Lyon: Thank you.

However, we go further than this and suggest that there should be a similar through route established to link Louisville and Cincinnati and also the cities of Ashland, Kentucky, and Huntington, West Virginia, and Princeton-Bluefield, West Virginia, i. e., Roanoke, Lynchburg, Richmond and Norfolk.

Delta Airlines had proposed such service to Norfolk from Cincinnati and Eastern from Louisville. Delta's application would require new mileage all the way from Cincinnati to Norfolk in addition to the consideration that such a route bears no natural relation to its present route, while Eastern would require new mileage only from Roanoke to Norfolk in order to provide direct one-carrier service between Louisville and Norfolk.

A route to be established for State Airlines over the mountains to Roanoke, Lynchburg, Richmond, and Norfolk would have the obvious advantage over the proposals of

[R. 15260]

either Delta or Eastern in that it would connect both Louisville and Cincinnati by direct routes to both Richmond and Norfolk. It would, however, have the disadvantage over Eastern's proposal of requiring new route mileage all the way.

If the Board should take the position that only one experimental route for State Airlines should be certificated to the Atlantic Seaboard, it is the position of public counsel that

such route should follow in general the plan laid out by the Examiners, i. e., through the North Carolina cities to Wilmington, rather than through the Virginia cities to Norfolk.

In that case we would recommend the award of a Roanoke, Richmond, Norfolk extension to Eastern Air Lines, rather than to Piedmont Aviation, Inc., as recommended by the Examiners.

The award to Eastern would provide not only the needed local service between the Virginia cities, but would also connect them directly by trunkline service to Louisville and the West.

The certification of Eastern's proposal, however, would have the serious disadvantage of providing no direct service between Cincinnati and Norfolk, one of the great needs to be served by the proposed route.

CIVIL AERONAUTICS BOARD

DOCKET NO. 501, ET AL.

SOUTHEASTERN STATES CASE[1]

Decided April 4, 1947

Piedmont Aviation, Inc., authorized to engage in air transportation of persons, property, and mail, for a period of 3 years: (a) between the alternate terminal points Louisville, Ky., and Cincinnati, Ohio, the intermediate points Lexington, Ky., Bristol, Va., and beyond Bristol (1) the intermediate points Asheville, Charlotte, Southern Pines-Pinehurst-Aberdeen, and Fayetteville, N. C., and the terminal point Wilmington, N. C., and (2) beyond Bristol the intermediate points Winston-Salem, Greensboro-High Point, Raleigh-Durham, and Goldsboro, N. C., and the terminal point New Bern, N. C., and a seasonal operation between New Bern and Morehead City, N. C., between May 1 and October 31 of each year; (a) between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky., Huntington, W. Va., Charleston, Beckley, and Princeton-Bluefield, W. Va., Roanoke, Lynchburg, Charlottesville, and Richmond, Va., and the terminal point Norfolk, Va.; (b) between the terminal point Roanoke, Va., the intermediate points Danville, Va., and Greensboro-High Point, Raleigh-Durham, and Fayetteville, N. C., and the terminal point Wilmington, N. C., subject to a further showing as to the adequacy of airport facilities.

Southern Airways, Inc., authorized to engage in air transportation of persons, property, and mail for a period of 3 years: (a) between the terminal point Memphis, Tenn., the intermediate points Tupelo and Columbus, Miss., Tuscaloosa, Birmingham, and Gadsden, Ala., Atlanta and Athens, Ga., and Greenwood, Greenville, Spartanburg, and Rock Hill, S. C., and the terminal point Charlotte, N. C.; (b) between the terminal point Atlanta, Ga., the intermediate points La Grange, Columbus, Albany, Moultrie, and Valdosta, Ga., and the terminal point Jacksonville, Fla.; and (c) between the terminal point Columbus, Ga., the intermediate points Macon and Augusta, Ga., Orangeburg, S. C., and the terminal point Charleston, S. C., subject to a further showing as to the adequacy of airport facilities.

Certificate of public convenience and necessity of American Airlines, Inc., for route No. 4 amended to include Richmond, Va., as an intermediate point between Washington, D. C., and Lynchburg, Va.

Certificate of public convenience and necessity of Delta Air Lines, Inc., for route No. 24 amended to include Selma and Montgomery, Ala., and Columbus, Ga., as intermediate points alternate to Birmingham, Ala., between Meridian, Miss., and Atlanta, Ga.; and to include Macon, Ga., as an intermediate point, alternate to Augusta, between Atlanta and Savannah, Ga., and certificate for route

[1] This proceeding includes Dockets Nos. 540, 649, 685, 927, 1026, 1081, 1114, 1180, 1278, 1332, 1350, 1422, 1472, 1611, 1655, 1671, 1708, 1711, 1717, 1718, 1720, 1722, 1727, 1728, 1730, 1732, 1735, 1734, 1735, 1737, 1738, 1745, 1751, 1766, 1767, 1768, 1771, 1772, 1773, 1774, 1776, 1777, 1779, 1829, 1898.

No. 54 amended to include Chattanooga, Tenn., as an intermediate point alternate to Knoxville, Tenn., between Lexington, Ky., and Atlanta, Ga.

Certificate of public convenience and necessity of Eastern Air Lines, Inc., for route No. 5 amended to include Pensacola, Fla., as an intermediate point between Montgomery and Mobile, Ala., to include Anderson, S. C., as an intermediate point between Greenville, S. C., and Atlanta, Ga., to include Danville, Va., as an intermediate point between Richmond, Va., and Winston-Salem and/or Greensboro-High Point, N. C., and to extend route No. 5 from the intermediate point Greenville, S. C., to the terminal point Chattanooga, Tenn.; certificate for route No. 6 amended to include Florence, S. C., as an intermediate point between Raleigh-Durham, N. C., and Charleston, S. C.; certificate for route No. 10 amended to include Waycross, Ga., as an intermediate point between Macon, Ga., and Jacksonville, Fla., to include Rome, Ga., as an intermediate point between Chattanooga, Tenn., and Atlanta, Ga., and to include Huntsville, Ala., as an intermediate point alternate to Florence-Sheffield-Tuscumbia, Ala., between Nashville, Tenn., and Birmingham, Ala.; and certificate for route No. 47 amended to include Owensboro, Ky., as an intermediate point between Evansville, Ind., and Louisville, Ky., and to include Ashland, Ky.-Huntington, W. Va., as an intermediate point between Lexington-Frankfort, Ky., and Charleston, W. Va.

Certificate of public convenience and necessity of Pennsylvania-Central Airlines Corporation for route No. 51 amended to extend said route from the intermediate point Rocky Mount, N. C., to the terminal point Washington, D. C., via the intermediate point Richmond, Va.; to include Winston-Salem and Hickory, N. C., as intermediate points between Greensboro-High Point and Asheville, N. C., and to extend said route from Knoxville, Tenn., to the terminal point Memphis, Tenn., via the intermediate points Chattanooga, Tenn., and Huntsville, Ala.

Certificate of public convenience and necessity of Transcontinental & Western Air, Inc., for route No. 58 amended to include Louisville, Ky., as an intermediate point between St. Louis, Mo., and Cincinnati, Ohio.

Relationships between Southern Airways, Inc., and other affiliated corporations and Frank W. Hulse approved subject to certain conditions.

Applications of Pennsylvania-Central Airlines Corporation to extend route No. 55 from Birmingham to Mobile, Ala., Transcontinental & Western Air, Inc., to include Hagerstown and Cumberland, Md., as intermediate points on route No. 61, and Southern Bus Lines, deferred.

Temporary authority of Eastern Air Lines, Inc., to include Huntsville, Ala., as an intermediate point on route No. 10 between Florence-Sheffield-Tuscumbia and Birmingham, Ala., terminated.

Temporary authority of Pennsylvania-Central Airlines Corporation to include Huntsville, Ala., as an intermediate point on route No. 55 between Chattanooga, Tenn., and Birmingham, Ala., terminated.

Establishment of local service to cities in Mississippi, Louisiana, Alabama, and Georgia, other than that expressly provided for herein, deferred.

Applications denied in all other respects.

APPEARANCES:

Austin M. Zimmerman and *Hamilton O. Hale* for All American Aviation, Inc.
Robert L. Griffith, Howard C. Westwood, and *Daniel M. Gribbon* for American Airlines, Inc.
John G. Dawson for Atlantic and Carolina Airways Co.
Joe Brown Cummings and *Albert Williams* for Blue Grass Airlines and Gillespie Airways.
Gerald P. O'Grady for Braniff Airways, Inc.
Richard S. Maurer for Chicago and Southern Air Lines, Inc.
Alexander C. Dick and *Edward S. Ridley* for Colonial Airlines, Inc.
Vincent L. Gingerich and *S. L. Blakely* for Commonwealth Air Transport, Inc.
Logan E. Patterson for Cotton Belt Airlines, Inc.
Ernest V. Moore and *Leslie Craven* for Delta Air Lines, Inc.

E. Smythe Gambrell, Harold L. Russell, and *Charles A. Moye, Jr.*, for Eastern Air Lines, Inc.

William I. Denning, John W. Cross, Dean S. Zinn, and *Richard A. Fitzgerald* for National Airlines, Inc.

Charles H. Murchison and *Stanley C. Morris* for Pennsylvania-Central Airlines Corporation.

W. P. Sandridge for Piedmont Aviation, Inc.

Will E. Ward for Prairie Airlines, Inc.

Wesley E. McDonald for Seaboard Air Transport.

L. B. Hallowell and *Albert F. Beitel* for South East Airlines, Inc.

J. Edward Burroughs, Jr., for Southeastern Air Express, Inc.

Abbott P. Mills and *Cecil A. Beasley, Jr.*, for Southern Airways, Inc.

Charles Campbell Brown for Southern Aviation Corporation.

William A. Roberts, Phillip S. Jessup, and *A. L. Wheeler* for Southern Bus Lines and Virginia Airways.

Wilmer A. Hill and *Henry K. Gilbert, Jr.*, for State Airlines, Inc.

James K. Crimmins and *Norman Boucrsox* for Transcontinental & Western Air, Inc.

Merle P. Lyon and *V. Rock Grundman*, Public Counsel.

C. Edward Leasure and *T. F. Watkins* for Anderson, S. C.

Philip Cocke, Jr., and *Dan S. Elias* for Asheville, N. C.

A. E. Runnels, C. M. Shackleford, and *Walter R. Brown* for Albany, Ga.

B. A. Moore for Charleston, S. C.

Douglas K. Fuller for Cincinnati, Ohio.

Leslie Lacroix for Evansville, Ind.

Ceasar Cone for Greensboro-High Point Airport Authority.

E. E. Bentley and *John L. Roads* for Jacksonville, Fla.

G. A. Gaillard for Key Airlines.

James P. Haynes and *A. H Near* for Louisville, Ky.

George S. Wilson, Jr., Larry Vaughn, M. J. Crafton, L. S. Cox, and *R. M. Sandridge* for Owensboro, Ky.

Raymond H. Saal for Pensacola, Fla.

William A. Roberts for Plantation Airlines, Inc.

J. M. Broughton for Raleigh-Durham, N. C.

Olin A. Rogers and *Frank I. McDonough* for Richmond, Va.

B. A. Moore for South Carolina Aeronautics Commission.

George Darr, Jr., for Southern Commercial Air Transport.

L. G. Millan, Jr., J. P. Nanney, Harry S. Myers, and *H. A. Boren* for Tupelo, Miss.

G. P. Callison and *James H. Hollingsworth* for Greenwood, S. C.

George B. Cook for Valdosta, Ga.

H. E. Boyd for Wilmington, N. C.

Leonard Hartenfeld for Wilson, N. C.

Charles E. Norfleet, for Winston-Salem, N. C.

Mrs. K. G. Berrie for Brunswick, Ga.

Bentley H. Chappell for Columbus, Ga.

Mrs. Lillian T. Jones and *Mrs. S. B. Lassiter* for Tifton, Ga.

Kenneth C. Larkey for Memphis, Tenn.

L. V. Blan for Waycross, Ga.

James W. Butler for Goldsboro, N. C.

Robert S. Burgess for Post Office Department.

J. W. Anderson for Chattanooga, Tenn.

Walter Cates for Macon, Ga.

Floyd Kay for Spartanburg, S. C.

W. S. Harney for Norfolk, Va.

Scott B. Barkley and *K. B. Miles* for Greenville, S. C.

T. B. Ulrich for Camden, S. C.

Henry W. Pyne for Rome, Ga.

Leo F. Johnson for Savannah, Ga.

J. T. Pinkston for Meridian, Miss.

H. B. Campbell for Charlotte, N. C.

Hubert Schneider for Hagerstown, Md.

Dewey Swicegood and *Howard Hylton* for Danville, Va.

Opinion

By the Board:

This proceeding involves proposals for the establishment of new and additional air transportation services in the southeastern portion of the United States. Included in this area are the States of Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and portions of Ohio, Indiana, Florida, Missouri, and Maryland.[2] Appendix No. 1 contains a brief sumary of evidence included in the record in support of the proposals of the noncertificated applicants.

Leave to intervene was granted to the Pan Atlantic Steamship Corporation; the South Carolina Aeronautics Commission; Campbell County, Kentucky; The Board of Commissioners of Montgomery, Ala.; Southern Commercial Air Transport, Inc.; Key Airlines; Plantation Air Lines, Inc.; Mobile, Florence, Huntsville, Sheffield, and Birmingham, Ala.; Jacksonville and Pensacola, Fla.; Albany, Brunswick, Columbus, Tifton, Valdosta, Waycross, Moultrie, Rome, Augusta, Savannah, and Macon, Ga.; Asheville, Charlotte, Goldsboro, Wilson, Greensboro, High Point, Rocky Mount, Winston-Salem, Raleigh, and Wilmington, N. C.; Anderson, Charleston, Greenville, Greenwood, and Spartanburg, S. C.; Chattanooga and Memphis, Tenn.; Cincinnati, Ohio; Louisville, Owensboro, and Paducah, Ky.; Norfolk, Richmond, Lynchburg, and Danville, Va.; Tupelo and Meridian, Miss.; Huntington, W. Va.; Evansville, Ind.; and Hagerstown, Md.

After due notice to the public and all interested parties a public hearing was held in Greensboro before Examiners Ross I. Newmann and Curtis C. Henderson. An examiner's report has been issued, exceptions and briefs in support thereof have been filed, and oral argument has been heard by the Board.

On July 30, 1945, the Board issued its opinion in the *Great Lakes-Florida* case,[3] wherein new and additional trunk-line services were authorized between Chicago, Ill., and Florida, and between Detroit, Mich., and Florida. Also involved in that proceeding were proposals for through service between Chicago and Norfolk and applications for extensive local service in a number of States embraced in the present proceeding. The Board recognized that some of these proposals might be required by the public convenience and necessity but in order to have an opportunity to examine all of the proposals for local service in the general area, decision with respect to these applications was deferred for further consideration with the instant proceeding. Deferred were the proposals of Eastern, PCA, and Delta for a Chicago-

[2] Service to all or a portion of the above-mentioned area is proposed by All American Aviation, Inc., Docket No. 1738; American Airlines, Inc., Docket No. 1766; Atlantic and Carolina Airways Company, Docket No. 1332; Blue Grass Airlines, Docket No. 1777; Branif Airways, Inc., Dockets Nos. 1717 and 1718; Chicago and Southern Airlines, Inc., Dockets Nos. 1767 and 1829; Colonial Airlines, Inc., Docket No. 1768; Commonwealth Air Transport, Inc., Docket No. 1350; Cotton Belt Airlines, Inc., Docket No. 1472; Delta Air Lines, Inc., Dockets Nos. 1708 and 1729; Eastern Air Lines, Dockets Nos. 1180, 1278, 1671 and 1728; Gillespie Airways, Docket No. 1081; National Airlines, Inc., Dockets Nos. 1722 and 1771; Pennsylvania Central Airlines Corporation, Dockets Nos. 649, 685, 1772, 1730, 1732, 1733, 1734, 1735 and 1737; Piedmont Aviation, Inc., Docket No. 1422; Prairie Airlines, Inc., Docket No. 1611; Seaboard Air Transport, Inc., Docket No. 927; South East Airlines, Inc., Docket No. 1655; Southeastern Air Express, Inc., Dockets Nos. 1751 and 1773; Southern Airways, Inc., Dockets Nos. 1774 and 1898; Southern Aviation Corporation, Docket No. 540; Southern Bus Lines, Docket No. 1779; State Airlines, Inc., Dockets Nos. 1714, 1711, and 1776; Transcontinental and Western Air, Inc., Dockets Nos. 1026 and 1727; and Virginia Airways, Docket No. 1745.

[3] *Eastern A. L. et al., Great Lakes-Florida*, 6 C. A. B. 429 (1945).

Norfolk route, the applications of South East Airlines and Virginia Central Airlines, and a portion of the application of State Airlines, Inc. Also deferred for consideration with the instant proceeding is Eastern's application, Docket No. 1595, proposing service to New Bern and Wilmington, N. C.[4]

ECONOMIC AND GEOGRAPHIC CHARACTERISTICS

Economic growth.—The general area encompassed in this proceeding is rich in farm, forest, and mineral reserves. Fourteen cities of this area had a 1940 population of 100,000 or more. Once principally agricultural, the area now has a number of regions of major industrial importance. A progressive urbanization of the rural sections has accompanied its economic growth.

In agriculture, aside from its basic farm products of cotton, corn, and tobacco, this area produces crop specialities such as nuts, fruits, vegetables, and poultry in large quantities. Its varied forest resources are a base of a large part of the industry and a source of a great deal of the income of the people of the southeastern area.

A large measure of the area's economic strength also lies in its abundant mineral resources. Coal, iron ore, limestone, phosphates, natural gas, petroleum, clay, cement-making materials, and building stone are its chief minerals. There is also a wide distribution of water-power resources.

Accompanying the exploitation of the natural resources has been the rise of manufacturing and trade. Leading manufacturing industries are the iron and steel industry in the Birmingham district; cotton manufacturing east of the Appalachians; the tobacco industry in North Carolina, Virginia, and Kentucky; ship building in a number of the coastal cities; the distilling industry in Kentucky; the machine-tool, clothing, leather, soap, and metals industries of the Cincinnati-Covington district; and the forest industries, such as paper and lumber mills, furniture factories, tanneries, and naval stores found throughout the area.

Geography.—The area under discussion is made up of several physiographic divisions or land regions. Running through the area in a general northeast-southwest direction are the Appalachian Mountains. The Blue Ridge forms the eastern border of those mountains in Virginia. To the east and south of this plateau are the Atlantic and Gulf coastal plains. West of the Southern Appalachians and the Blue Ridge Mountains of Virginia is the Great Appalachian Valley. To the west of this valley extend the Appalachian and Interior Plateaus and the basin of the Mississippi River.

While the northern Appalachian range is cut by rivers, providing important channels for trade and travel, the southern Appalachian Mountains have only a few minor breaks and water gaps. As a result, the southern Appalachians have been a barrier to cross-mountain transportation.

EXISTING TRANSPORTATION FACILITIES

Surface transportation.—The pattern of existing surface transportation facilities in the southeastern area reflects to a significant

[4] *Eastern A. L. et al., New Bern-Wilmington*, 6 C. A. B. 423 (1945).

degree its physical geography. The dominant rail and highway routes run north and south. Running transverse to these channels of traffic are the east-west rail routes, a number of which are branch lines of major north-south roads. That part of the southeastern area between the Appalachians and the Mississippi River and south to the Gulf is served principally by three major railroads: the Louisville & Nashville, the Illinois Central, and the Gulf, Mobile, and Ohio. Each is chiefly a north-south road. The Louisville & Nashville's main artery runs from Cincinnati, Ohio, to New Orleans, La., via Louisville, Ky., Nashville, Tenn., and Mobile, and its second major route runs from Cincinnati to Atlanta, Ga. The Illinois Central, operating from Chicago to New Orleans via Memphis and Jackson, Miss., has a branch line to Birmingham and one between Paducah and Louisville. The Gulf, Mobile and Ohio operates routes from New Orleans and Mobile northward to St. Louis, Mo., via Jackson and Meridian, Miss., with a branch for passengers and freight to Montgomery, Ala., and branches for freight only to Memphis and Birmingham. East-west rail service in this part of the area, aside from branches of the north-south roads running in these directions, is provided chiefly by Southern Railway's route from Memphis to Chattanooga, and the Nashville, Chattanooga & St. Louis Railway's line from Memphis to Atlanta via Chattanooga.

Railroad transportation between the Cincinnati-Covington and Washington-Norfolk regions is provided by the Baltimore & Ohio, the Chesapeake and Ohio, and the Norfolk & Western. Baltimore & Ohio's southern route runs in part from Cincinnati to Washington across northern West Virginia; the Chesapeake and Ohio runs a main line from Cincinnati and Louisville via southern West Virginia and central Virginia to the lower Chesapeake Bay region; and the Norfolk & Western extends westward from Norfolk through southwestern Virginia and southern West Virginia to Cincinnati, with branch lines into North Carolina and Kentucky. These three major lines connect the middle west and part of the trans-Appalachian region with the Atlantic coast.

The main channels of railroad traffic in the Piedmont region are provided by the Southern Railway System. Its main artery of traffic in this region extends from Washington southward to Atlanta via numerous intermediate points. From Atlanta it continues to New Orleans, via Birmingham and cities in Mississippi; Atlanta and Birmingham also have connections on this line with Chattanooga, Memphis, and Cincinnati. Branches of the Southern's main route also run into the ports of Jacksonville, Brunswick, Savannah, Charleston, and Norfolk on the Atlantic, and Mobile on the Gulf of Mexico.

The Atlantic Coast Line and the Seaboard Airline Railway operate along the coastal region through the Carolinas, Georgia, and Florida, with branch lines extending into Atlantic and Gulf Coast ports, across the coastal plain into the Piedmont regions, and westward across Georgia. Lines of both of these roads also extend into northern Alabama. The Atlanta and West Point Railroad connects a number of Alabama and Georgia cities. The Central of Georgia Railway has extensive lines in Georgia and runs as far west as Montgomery, Birmingham, and Chattanooga. The Charleston & Western Carolina Railway serves various South Carolina and Georgia cities.

The general pattern of passenger bus lines follows rather closely that of the railway channels of traffic. Except for traffic between the Piedmont and the coastal cities, the average time consumed in traveling by bus is in general somewhat greater than that required by railroads.

Air transportation.—Existing carriers operating in the southeastern area are Eastern, Delta, PCA, American, and National. Eastern provides extensive services throughout the area with routes extending from Chicago, Detroit, and Boston, Mass., to Florida, and from Boston to New Orleans and beyond to Texas and Mexico City. It also operates from St. Louis to Washington, D. C., serving cities in Indiana, Kentucky, and West Virginia. Delta serves a number of cities in the area on its route from Savannah to Fort Worth, Tex. Its operations in the southeastern area were recently expanded as a result of the Board's decision in the *Great Lakes-Florida* case, *supra*, wherein Delta was authorized to operate from Cincinnati to Chicago and from Knoxville to Florida via various cities in North Carolina, South Carolina, and Georgia. National operates through the area on its New York-Jacksonville-New Orleans and New York-Miami routes. PCA operates from Washington to Norfolk and thence to Knoxville via various intermediate points and from New York and Pittsburgh, Pa., to Birmingham. American services a number of cities in Virginia, West Virgina, and Tennessee on its transcontinental route.

APPLICATIONS OF EXISTING AIRLINES

American.—American seeks to include Richmond, Va., Louisville, Ky., Evansville, Ind., and Paducah, Ky., as intermediate points on its route No. 4. In addition American seeks nonstop authorizations between Louisville-New York, Louisville-Washington, Louisville-Memphis, Louisville-Tulsa, and Louisville-Oklahoma City.

American proposes new first one-carrier service between Richmond and 40 cities having an aggregate population in 1940 of over 17,000,000. Rail travel between Richmond and these 40 cities in 1933 amounted to 16,568 persons. American's exhibits show that during the Board's survey months there was practically no air traffic between Richmond and these cities. American proposes additional one-carrier service between Richmond and 7 cities having an aggregate population in 1940 of over 19,000,000. Rail travel between Richmond and these cities in 1933 amounted to 99,198 persons. At the present time Richmond's air service to the west is through the Washington gateway, which involves a 90-mile back haul and a change of carrier. It is recognized that the designation of Richmond on American's route No. 4 would duplicate the service of Eastern to Washington, D. C., Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass. However, it does not appear that such diversion would be sufficiently serious to outweigh the benefits to the public of American's service to Richmond which could be operated at no additional cost to the Government. We find therefore that the public convenience and necessity require the inclusion of Richmond as an intermediate point on American's route No. 4 between Washington and Lynchburg.

American also seeks the inclusion of Louisville, Evansville, and Paducah as intermediate points on its route No. 4 between Washington

and Memphis. American now serves Louisville on its route No. 22, and provides, or can provide, one-plane service from Louisville to most of the cities on its system. Much of American's case was directed to the benefits that would flow to the public by the establishment of various nonstop transcontinental operations if Louisville is added as an intermediate point on route No. 4. Delta, Eastern, and TWA object to the granting of American's application, contending that it is merely an attempt to shorten its transcontinental route. TWA takes the position that the granting of American's application would result in no real benefit to Louisville, but would enable American to encroach upon TWA's shortest transcontinental route.

American now provides Louisville-Nashville service on its route No. 22, and gives Louisville service to Washington, New York, and other eastern cities via Cincinnati over its route No. 25. The saving in mileage by the addition of Louisville to American's transcontinental route would be small. To the east only 20 miles would be saved between Louisville and Washington, and only 53 miles between Louisville and New York. Even if all of American's nonstop requests were granted, the saving over American's shortest present routings would be only 28 miles between Washington and Tulsa, Okla., 31 miles between Washington and Oklahoma City, Okla., 49 miles between New York and Tulsa, and 52 miles between New York and Oklahoma City. In the past American has operated through schedules from Louisville to Washington and New York via Cincinnati, as well as schedules from Louisville to the West Coast via Nashville. Direct service between Louisville and Washington, Louisville and Philadelphia, Louisville and New York, and Louisville and Boston is already furnished by Eastern. American's proposal between those points would not be shorter than Eastern's and in fact would be only 20 miles shorter than American's own service via Cincinnati. American's proposed service from Louisville to the west via Evansville, Paducah, and Memphis represents only a 3-mile saving over American's present service to the west via Nashville. American's proposal would duplicate Eastern's route No. 47 between Washington, Louisville, and Evansville, and Chicago and Southern between Evansville, Paducah, and Memphis. The evidence of record will not support a finding that the services of Eastern or of Chicago and Southern over these routes have been inadequate or that an additional carrier is needed to supply the traffic demands at this time. On the basis of the foregoing and all the facts of record, we find that American's application to include Louisville, Evansville, and Paducah as intermediate points on route No. 4 should be denied.

Colonial.—Colonial proposes three routes between Washington and Jacksonville via various intermediate points, and a route between Washington and Tallahassee, Fla. Colonial points out that at the time of the hearing in this proceeding its only route was from New York to Montreal, Canada, and that its application for Washington-Jacksonville and Washington-Tallahassee service was necessarily presented as an operation detached from and unconnected with its system as then constituted. Colonial refers to the fact that it has been awarded a route between Washington, Ottawa, and Montreal and that the proposals which it seeks in the instant proceeding can be integrated with its present system.

Colonial's proposal in this proceeding to operate between Washington and Jacksonville and between Washington and Tallahassee over four different routes would involve approximately 4,000 new route miles. Practically every segment on each of Colonial's proposed routes is now served by one or more carriers and all the cities which Colonial proposes to serve now have air service with the exception of Southern Pines, N. C., Danville, Va., Aiken and Camden, S. C., and Thomasville, Ga. Direct one-carrier service is now available between nearly all principal pairs of cities which Colonial proposes to serve. Competitive service is available between many of such pairs.

Colonial would bring little in the way of new service to cities it proposes to serve in the southeastern area except for direct connections with Canada and cities north of Washington, about which there is little evidence of record in this proceeding. Likewise, the record will not support a conclusion that additional point-to-point competition is needed between Washington and Jacksonville or between Washington and Tallahassee. In view of the foregoing considerations and all the facts of record we find that the application of Colonial should be denied.

Transcontinental & Western Air, Inc.—TWA seeks to add Louisville as an intermediate point on its route No. 58 and to add Cumberland and Hagerstown, Md., as intermediate points on its route No. 61. In the past a substantial volume of traffic from Louisville has taken advantage of direct rail service to the cities to be served by TWA. In 1933 there were 128,554 rail passengers between Louisville and cities which would receive direct service under TWA's proposal. Of these, 14,320, an average of nearly 40 per day, would have received first direct one-carrier service by TWA. More than half of these rail passengers moved between Louisville and Detroit, and 1,174 between Louisville and Toledo, Ohio and will be directly served by TWA's route No. 58. To the east, 4,203 rail passengers traveled between Louisville and Pittsburgh and 368 between Louisville and Wheeling, W. Va., and to the west 533 were carried between Louisville and San Francisco-Oakland, Calif., and 280 between Louisville and Kansas City, Mo. TWA points out that hotel registrations at Louisville reveal the same traffic pattern. During the year 1939 Louisville hotels, with 50 percent of the available first class rooms, registered 76,056 guests from States served by TWA. Another count for 1939 shows that a total of 4,813 guests registered from some of the cities to receive first one-carrier service under TWA's proposal. Notable among these were Detroit with 2,128, Pittsburgh with 1,063, Kansas City with 745, Toledo with 632, and San Francisco-Oakland with 152. During 1944 the registrations at the same hotels from States served by TWA totaled 79,548, of which 5,826 were from cities to receive first direct service. Again the leading cities were Detroit with 2,556, Pittsburgh with 944, Toledo with 708, Kansas City with 606, and San Francisco-Oakland with 226.

An analysis of long distance telephone calls from Louisville, during the periods October 7 to 20, 1944, and March 7 to 20, 1945, indicates that of 22,557 calls made in the first period 20,016 were to cities now served by TWA and 2,129 to cities to which TWA would offer first one-carrier service. Of 28,822 calls made in the latter period 25,559

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were made to cities served by TWA and 2,935 to cities to which TWA would offer first one-carrier service.

In the Board's three survey months (November 1939, September 1940, and March 1941) there were 1,118, 2,227, and 1,598 Louisville passengers to TWA's points representing 70, 71, and 65 percent, respectively, of all Louisville air passengers. However, there were only 67, 146, and 116 passengers, respectively, to cities to which TWA offers first one-carrier service; and in September 1940 TWA participated in carrying only 129 and in March 1941 only 125 of the total passengers. A comparison of rail and air passengers to the points which TWA seeks to provide one-carrier service makes it obvious that during the three survey months Louisville was deficient in air travel to those cities. In that period there were only 186 air passengers, or an average of 62 per month, to Detroit as compared with 7,413 rail passengers in 1933 and only 85 air passengers, or an average of 28 per month, to Pittsburgh as compared with 4,203 rail passengers. TWA points out that when it commenced operation of the Marquette route,[5] however, the number of air passengers increased substantially. For instance in the 5 months May through September 1941 TWA carried an average of 150 Louisville passengers monthly to Detroit alone, more than the monthly total of Louisville passengers to all TWA points which would receive first one-carrier service in the three survey months.

The improved service which TWA proposes to render Louisville will not adversely affect other air carriers. TWA contends that 65 percent of the traffic to be carried by it will move to points such as Detroit, Toledo, Pittsburgh, Kansas City, Fort Wayne and South Bend, Ind., Wichita, Kans., Wheeling, and San Francisco, which are not served by American or Eastern. This traffic, newly generated for the most part, will involve no diversion. TWA estimates that approximately 25 percent of the balance will move to Cincinnati and New York and the remainder mainly to large eastern cities. The record clearly supports TWA's proposal to serve Louisville and indicates that this service can be furnished at a profit with little or no adverse effect upon other air carriers. Accordingly, we find that the public convenience and necessity require the inclusion of Louisville as an intermediate point on TWA's route No. 58.

TWA proposes to include Hagerstown and Cumberland as intermediate points on route No. 61. Hagerstown, an important industrial community, is the third largest city in Maryland, with a 1940 corporate population of 32,491. Cumberland is Maryland's second largest city, with a 1940 population of 39,483. Neither Hagerstown nor Cumberland has any air service today. There are numerous applications in the *Middle Atlantic Area* case, Docket No. 674 et al., proposing service to Hagerstown and Cumberland. While the record in this case demonstrates that these cities require air service, in order that we may be in a position to determine the best manner in which these cities should be served, TWA's application to serve Hagerstown and Cumberland will be deferred for further consideration with the *Middle Atlantic Area* case.

Delta.—Delta proposes to add Chattanooga as an intermediate point on route No. 54 alternate to Knoxville between Lexington, Ky., and

[5] Route No. 58 from Cincinnati to Detroit.

Atlanta. Chattanooga's population in 1940 was 128,163. The 1940 population within a 25-mile radius was more than 350,000 and the city ranked third in Tennessee in manufacturing in 1939 when its 230 establishments produced goods valued at $77,570,000.

Cincinnati is recognized as one of the largest industrial centers in the country. Delta points out that one of the most substantial communities of interest between any pair of points in the entire proceeding exists between Cincinnati and Chattanooga. It states that the volume of 1933 rail traffic (6,669) does not of itself illustrate the sizable interest between these cities. Delta asserts that an actual count of the number of passengers that used the facilities of the Cincinnati Southern Railway, which operates between Cincinnati and Chattanooga via Lexington and Danville, Ky., and Harriman, Tenn., during the years 1937 to 1943, inclusive, totaled 392,046, 278,617, 317,755, 352,784, 456,323, 896,977, and 1,438,472, respectively. Delta contends these data demonstrate the need for a direct one-carrier air service between these cities. Hotel registration data further substantiate this contention. During a 4-month period in 1939 2,389 Cincinnati guests were registered at Chattanooga hotels and 1,222 registrants from Chattanooga were recorded at Cincinnati hotels. Delta contends that on the basis of these figures there were over 2,000 potential trips per month between these cities in the year 1939.

Delta recognizes that the certification of Chattanooga as an intermediate point on route No. 54 would create a service competitive with Eastern between Chattanooga and Atlanta. It assets, however, that such duplication is incidental and should not prevent the establishment of this much-needed service. The record in this proceeding definitely demonstrates the need for one-carrier service between Chattanooga and Cincinnati, and the public interest involved completely overshadows the diversional effect which the service would have upon Eastern's existing service between Chattanooga and Atlanta. We find therefore that the public convenience and necessity require the inclusion of Chattanooga as an intermediate point on Delta's route No. 54.

Delta seeks to serve the cities of Montgomery and Columbus as intermediate points alternate to Birmingham between Meridian and Atlanta, and to serve Macon as an intermediate point alternate to Augusta between Atlanta and Savannah. Montgomery, the capital of Alabama, had a 1940 metropolitan population of 93,697. The report of the Federal Coordinator of Transportation shows that 29,990 rail passengers traveled in 1933 between Montgomery and the Delta cities on routes Nos. 24 and 54. The record indicates that during the year 1940, 3,030 guests were registered at Montgomery hotels from Delta's route No. 24 cities. The registrants during that year from the route No. 54 cities of Cincinnati, Knoxville, Tenn., and Lexington were 618, 216, and 96, respectively. Telephone call data contained in the record lend further weight to the contention that a strong community of interest exists between Montgomery and the cities on Delta's system.

Columbus, Ga., the county seat of Muskogee County, had a 1940 population of 52,280, and the population of the area within a radius of 25 miles was 97,353. Columbus is the second largest cotton manu-

facturing city in the south, and its 12 mills have about 8,000 looms and over 550,000 spindles.

The addition of Montgomery and Columbus as intermediate points on route No. 24, alternate to Birmingham, would not only provide Montgomery and Columbus with a much-needed outlet to the west, but would also give these cities first one-carrier service to Delta's route No. 54 cities of Knoxville, Lexington, and Cincinnati. We will also add Selma as an intermediate point between Meridian and Montgomery on Delta's proposed route. Selma, the county seat of Dallas County, Ala., had a 1940 population of 19,834, and the population of the area within a radius of 25 miles was 81,850. There is no direct rail service between Selma and Meridian or Jackson. Although there is direct service to Montgomery these trains carry freight as well as passengers and the service is slow and unsatisfactory. Selma has no air service at the present time, the nearest certificated airline stop being Montgomery, a distance of 50 miles by highway. In view of the foregoing considerations and all the facts of record, we find that the public convenience and necessity require the amendment of Delta's route No. 24 to provide service from Meridian to Selma, Montgomery, Columbus, and Atlanta.

Macon's 1944 population was estimated at 75,000. The record shows that the greatest flow of rail traffic to and from Macon is with Atlanta, Savannah, and Jacksonville, in that order. The Coordinator's report indicates that out of a total of 96,103 rail passengers that traveled in and out of Macon in 1933, 26,166 were Atlanta passengers, 5,440 Savannah traffic, and 2,195 traveled to and from Jacksonville. Hotel registration data also illustrate that Macon's community of interest with Savannah is second only to Atlanta. During the week of October 1 to 7, 1942, the number of Atlanta guests registered at 4 hotels in Macon totaled 516, while Savannah was second with 130.

Macon is presently a certificated point on Eastern's route No. 10. This service supplies Macon with direct access to Atlanta, a point with which it has its greatest interest. Delta's proposal will provide Macon with direct service to Savannah, a city in which its second greatest interest lies, and will also afford Macon additional service to Atlanta as well as one-system service to the various cities served by Delta on its routes Nos. 24 and 54. In view of the foregoing, we find that the public convenience and necessity require the addition of Macon as an intermediate point on Delta's route No. 24, alternate to Augusta.

Delta has applied for authority to extend its route No. 24 from Columbia, S. C., to Washington, via Charlotte, Winston-Salem, Greensboro, and Roanoke, Lynchburg, and Richmond, Va. Subsequent to the hearing in this proceeding, the Board's decision in the *Great Lakes-Florida* case, *supra*, was issued authorizing Eastern to extend its route No. 6 from Columbia to Detroit via Charlotte, Winston-Salem, and Greensboro-Hight Point, Roanoke, and other intermediate points. There has been no showing in this record that an additional service between these Piedmont points is needed at this time. Delta's proposal would provide service between Roanoke, Lynchburg, and Richmond, which the record shows is required. However, we have hereinafter found that such service should be provided on a local or feeder basis rather than by a trunk-line carrier,

and should be operated as part of a feeder system in North Carolina and Virginia. In view of the foregoing and all the facts of record, we find that the public convenience and necessity do not require Delta's Columbia-Washington proposal.

Delta proposes to add Louisville as an intermediate point alternate to Lexington on its route No. 54 between Cincinnati and Knoxville. A similar application of Delta was denied by the Board in the *Great Lakes-Florida* case. Delta's proposal would provide little improved service, and would be largely duplicative of existing services which the record does not indicate are inadequate. The main benefit which would be derived from Delta's authorization to serve Louisville would be the establishment of a service between Louisville and the Piedmont. For reasons hereinafter stated, we have extended Eastern's route No. 5 from Greenville to Chattanooga, and we have established a local or feeder service between Louisville and the Piedmont area. These newly authorized services should adequately meet the need for Louisville-Piedmont service. Accordingly, Delta's application to include Louisville as an intermediate point on its route No. 54 will be denied.

Delta has requested authority to include Charlotte as an intermediate point on its route No. 54 alternate to Greenville-Spartanburg between Asheville and Columbia. Such a proposal would provide local service between Asheville and Charlotte and between Charlotte and Columbia, and in addition would connect Charlotte with other points on Delta's route No. 54. We believe the public interest will be better served by establishing a local or feeder service between Asheville and Charlotte than by authorizing Delta to operate this route. For reasons hereinafter stated we have authorized Piedmont to operate between Asheville and Charlotte. The Piedmont route will also provide Charlotte with direct service to Louisville and Cincinnati. Eastern now operates between Charlotte and Columbia, so that Delta's proposal is not needed to supply local service between these points. Under the circumstances, Delta's request to serve Charlotte will be denied.

Pennsylvania-Central Airlines Corporation.—PCA proposes to extend its route No. 55 from Bristol, Tenn., to Jacksonville and from Charleston, W. Va., to Jacksonville via various intermediate points. It also seeks to extend its route No. 55 from Birmingham to Mobile, and to amend route No. 51 in various respects. The extension of PCA from Charleston, W. Va., to Jacksonville, or from Bristol to Jacksonville would duplicate Eastern between Charleston, Roanoke, Winston-Salem, Greensboro, Columbia, and Savannah, Delta between Asheville, Greenville, Spartanburg, Augusta, and Savannah, and Eastern, Delta, and National between Savannah and Jacksonville. The record in this case will not support a finding that the existing services of Eastern, Delta, and National are inadequate or that competitive services are required at this time. Accordingly, PCA's application will be denied.

The extension of PCA from Birmingham to Mobile involves issues similar to those raised in the *Boston-New Orleans*[6] proceeding, hearing in which has been held. Under the circumstances, PCA's proposal to extend its route No. 55 to Mobile will be deferred for consideration when the *Boston-New Orleans* case is submitted for decision.

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[6] *Boston-New Orleans* case, Docket No. 730.

PCA's proposals to amend its route No. 51 have been discussed elsewhere in this opinion.

Eastern Air Lines, Inc.—Eastern proposes an extension of its route No. 47 from Charleston, W. Va., to Norfolk via Roanoke, Lynchburg, and Richmond. We have hereinafter found that service between these cities can be provided better by a local operator as part of a feeder system than by a trunk-line operation. Under the circumstances, Eastern's application to operate between Charleston and Norfolk will be denied.

Eastern proposes an alternate routing of its Chicago-Florida service by operating via Knoxville, Asheville, Greenville, Spartanburg, Columbia, Savannah, and Brunswick. In the *Great Lakes-Florida* case, Eastern proposed an identical service which was denied by the Board. In that proceeding the Board stated that the extension of Eastern's route No. 10 from Louisville to Columbia would divert a substantial volume of traffic from Delta's routes Nos. 24 and 54 and authorized Delta to operate from Knoxville to Jacksonville via Asheville, Greenville, Spartanburg, Columbia, Augusta, Savannah, and Brunswick. The evidence submittted by Eastern in the instant proceeding will not support a finding that the Board's decision in the *Great Lakes-Florida* case should be modified at this time. Eastern's application for Lousiville-Columbia-Jacksonville service will therefore be denied.

Eastern proposes to add as intermediate points on its routes Nos. 5, 6, 10, and 47, the cities of Petersburg, Lynchburg, Roanoke, and Danville, Va., Reidsville, Burlington, Salisbury, Rocky Mount, Goldsboro, Fayetteville, and Southern Pines-Pinehurst-Aberdeen, N. C., Anderson, Florence, and Aiken, S. C., Gainesville, Augusta, Rome, and Waycross, Ga., Anniston, Gadsden, and Dothan, Ala., Pensacola, Fla., and Ashland and Owensboro, Ky. Also under consideration in this proceeding is Eastern's application, Docket No. 1595, proposing service to New Bern and Wilmington, N. C.

Our study of the evidence of record in this proceeding, and in Docket No. 1595, leads us to the conclusion that service to several of these cities by Eastern is required by the public convenience and necessity. We believe, however, that some of these cities can better be served by local or feeder routes while others are too close to existing airline stops or already have air service to their major community of interest centers to require service by Eastern.

Anderson, the county seat of Anderson County, is the fifth largest city in South Carolina, having a 1940 population of 19,129. The record shows that in 1939 Anderson County had a total of 51 manufacturing establishments producing goods valued at $28,689,085 and was the third ranking county in South Carolina according to the value of manufactured products. Anderson has no air service at the present time, and existing rail service is poor. Passengers traveling north or south must take a train to Seneca, S. C., where the closest connection with an Atlanta-Charlotte train requires a layover of nearly 3 hours. None of the streamliners or fast Pullman trains stop at Seneca and connections are limited to the slower trains. The record shows that Anderson has a substantial community of interest with New York, Chicago, Baltimore, Charlotte, Atlanta, Birmingham, Washington, and Richmond. Accordingly we find that Anderson

should be designated as an intermediate point on Eastern's route No. 5 between Atlanta and Greenville.

Pensacola, situated on the Gulf of Mexico, had a 1940 population of 37,449, and a metropolitan population estimated at 85,000. In 1939 there were 76 manufacturing establishments in Escanbia County producing goods valued at more than 11 million dollars. Large military and naval establishments are located there. Pensacola is presently served by National as an intermediate point on its route No. 39. It has no direct air service, however, to Atlanta, cities in the Carolinas, and Washington, cities with which it has a substantial community of interest. The inclusion of Pensacola as an intermediate point on Eastern's route No. 5 between Montgomery and Mobile will provide that city with direct service to other cities on Eastern's system which the record shows is required. Accordingly, we find that Pensacola should be included as an intermediate point on Eastern's route No. 5 between Montgomery and Mobile.

Rome is the leading city of north Georgia and ranks sixth in the State with a 1940 population of 26,282. In addition to its resident population Rome has a transient population occasioned by the various educational institutions located in or near the city. Essentially a textile production center, Rome nevertheless enjoys a relatively diversified economy. Before the war manufacturing establishments maintained a weekly pay roll of nearly $200,000. Rome has no air service at the present time, the nearest certificated air stop being Atlanta, which is 67 miles away. The addition of Rome as an intermediate point on Eastern's route No. 10 between Chattanooga and Atlanta will adequately meet the air transportation needs of that city. We find therefore that Rome should be designated as an intermediate point on Eastern's route No. 10 between Chattanooga and Atlanta.

Waycross, the county seat of Ware County, had a 1940 population of 16,763. It is located in one of the Nation's most productive pecan and peanut belts and is also the center of a rapidly expanding paper and pulp industry. An important industry in the city is the production of gum naval stores. Waycross has no air service, the nearest airline stops being Brunswick, 50 miles away, and Jacksonville, 77 miles away. Eastern's exhibits show that Waycross' principal community of interest is with Atlanta, Jacksonville, New York, Savannah, Chicago, and Valdosta and Macon, Ga. Eastern flies directly over Waycross and no additional mileage would be required to add this city as an intermediate point on its route No. 10. In view of the foregoing, we find that Waycross should be designated as an intermediate point on Eastern's route No. 10 between Macon and Jacksonville.

Florence, the county seat of Florence County, had a 1940 population of 16,054. In 1939 there were 44 manufacturing establishments in Florence County producing goods valued at over 3 million dollars. The Atlantic Coast Line Railroad maintains shops and repair facilities in Florence which is one of the railroad's principal maintenance centers. Florence has no air service at the present time, and the nearest airline stops are Columbia, a distance of 83 miles, and Wilmington, a distance of 118 miles. Authorization of Eastern to serve Florence would provide that city with service to many cities with which it has a community of interest. Accordingly, we find that the public convenience and ne-

cessity require the inclusion of Florence as an intermediate point on Eastern's route No. 6 between Raleigh-Durham and Charleston, S. C.

Danville is the industrial and commercial center of the flue-cured, bright-leaf tobacco section of Virginia and is one of the principal tobacco markets in the country. The 1940 population of Danville proper was 32,749 and the population within a 30-mile radius was estimated at 244,819. Danville's principal industry is the manufacture of textiles. The Riverside and Dan River cotton mills are reputed to be the largest single cotton textile-producing unit in the world, the combined production of these plants in 1943 being $58,000,000. Danville has no air service at the present time, the nearest airline stop being Greensboro, a distance of 49 miles. We have hereinafter found that local service to Danville is required giving that city connections with Roanoke, Greensboro, Raleigh-Durham, and other cities in Virginia and North Carolina. However, the evidence of record establishes a need for service to other cities served by Eastern such as Atlanta, Washington, and New York. Accordingly, we find that the public convenience and necessity require the inclusion of Danville as an intermediate point on Eastern's route No. 5 between Richmond and Winston-Salem and/or Greensboro-High Point.

Eastern proposes to serve Ashland, Ky., as an intermediate point between Charleston, W. Va., and Lexington-Frankfort on its route No. 47. Ashland had a 1940 population of 29,537, and the population of its retail trading zone was estimated at 150,000 in 1944. Ashland is primarily an industrial city with many large corporations located there. The record shows that a joint airport is proposed for Ashland and Huntington, W. Va. These cities have a substantial community of interest with other cities on Eastern's routes, particularly with Charleston, W. Va., Lexington, Frankfort, and Louisville. Accordingly, we will designate Ashland-Huntington as an intermediate point on Eastern's route No. 47 between Lexington-Frankfort, and Charleston, W. Va.

Owensboro, Ky., located on the Ohio River about 125 miles from Louisville, had a 1940 population of 33,300. Approximately 40 factories are located there producing a range of products. Only one railroad company provides Owensboro with passenger transportation and its service is on a branch line. Owensboro has no air transportation service at the present time, and the nearest airline stop is Evansville, 42 miles away. Eastern presently flies almost directly over Owensboro and little new mileage would be required. In view of the foregoing, we find that the public convenience and necessity require the inclusion of Owensboro as an intermediate point on Eastern's route No. 47 between Evansville and Louisville.

Eastern proposes to add Savannah and Brunswick as intermediate points to its route No. 10 and Macon and Columbus as intermediate points to route No. 40.[7] Savannah and Brunswick are now served by Eastern's route No. 6 and Delta's route No. 54, and Savannah is also served by National's route No. 31. Macon is now an intermediate point on Eastern's route No. 10 and Columbus on Eastern's route No. 5. Under this proposal Eastern would be able to provide one-carrier service between Savannah and New Orleans via Macon, Columbus,

[7] Route No. 40 was consolidated with route No. 10 in a decision issued by the Board on January 9, 1947, *Eastern A. L., et al., Consolidation of Routes*, 7 C. A. B.

Montgomery, and Mobile. It would also afford a connection between these cities and points west of New Orleans along its route No. 5.

Eastern's exhibits show that the addition of Savannah, Brunswick, Macon, and Columbus to route No. 10 will provide these cities with many new services to points of major interest. The evidence submitted by Eastern does not, of course, take into consideration the Board's decision in the *Great Lakes-Florida* case which was issued subsequent to the hearing in this proceeding. That decision, together with additional authorizations to Delta hereinbefore found required, will afford Savannah, Brunswick, Macon, and Columbus direct service to all the points with which these cities have a substantial community of interest. In view of the foregoing we find that Eastern's proposed service to Brunswick, Savannah, Macon, and Columbus is not required.

National Airlines, Inc.—In this proceeding National seeks to include Rocky Mount as an intermediate point on its route No. 31. It also proposes two feeder line routes, one between Jacksonville and Tallahassee, and the other between Tallahassee and Mobile via various intermediate points. National's system is devoted primarily to providing air transportation of the conventional type utilizing large fast aircraft. The type of service visualized for the smaller communities involves an entirely new type of service gauged to meet the needs of these communities for relatively short hauls. In view of the limited traffic potentialities of the so-called local routes, an unusual effort will be required to develop the maximum traffic. Greater effort and the exercise of managerial ingenuity may be expected from an independent local operator whose continuation in the air transportation business will be dependent upon the successful development of traffic on the routes and the operation of the service on an adequate and an economical basis. We therefore find that National's application for local or feeder services should be denied.

We will also deny National's application to serve Rocky Mount. The inclusion of Rocky Mount on National's route No. 31 would involve a substantial deviation from National's route and would not provide Rocky Mount with service to Richmond and Washington, cities which the record shows have a substantial community of interest with Rocky Mount.

MEMPHIS-ATLANTA-JACKSONVILLE SERVICE

Delta and Chicago and Southern have requested authority to operate from Memphis to Jacksonville and Braniff seeks to extend its route from Memphis to Atlanta via Chattanooga. Chicago and Southern proposes to extend its existing north-south service from Memphis to Jacksonville by one of three alternative routes: (1) via Atlanta only, (2) via Chattanooga and Atlanta, or (3) via Birmingham and Atlanta. Delta's proposal involves a route from Memphis to Jacksonville via Tupelo, Birmingham, Columbus, Albany, and Valdosta. Delta also seeks to provide service between Memphis and Atlanta via Chattanooga.

Delta, Chicago and Southern, and Braniff are applicants in the pending *Kansas City-Memphis-Florida* case, Docket No. 1051, for routes similar to those sought in the *Southeastern States* case. Since similar issues are presented in both cases and the *Kansas City-*

Memphis-Florida case is now submitted to the Board for final decision, we will deny the applications of Delta, Chicago and Southern, and Braniff in the instant proceeding without prejudice to further consideration in connection with the *Kansas City-Memphis-Florida* case.

MEMPHIS-PIEDMONT-WASHINGTON SERVICE

New or additional air transportation services between Memphis, the Piedmont, and Washington have been requested by PCA, Eastern, Chicago and Southern, and Braniff. After the close of the hearing, Braniff withdrew its application for a Memphis-Washington service as requested in Docket No. 1717. PCA seeks to extend its route No. 51 from Asheville to Memphis and from Greensboro-High Point to Washington. Eastern proposes to extend route No. 5 from Greenville to Memphis and Chicago and Southern requests the extension of its system from Memphis to Chattanooga, Greenville-Spartanburg, Charlotte, and Winston-Salem, and thence to Washington, via various intermediate points.

The record shows a substantial community of interest between the Memphis area and the Carolinas and Virginia. In 1942 the States of Tennessee, North Carolina, and Virginia harvested some 1,601,000 acres of cotton which produced approximately 1,386,000 bales of cotton and 608,000 tons of cottonseed with 1,375 gins in operation. Memphis is the raw cotton market and the largest producer of cottonseed products in the country. In 1943, 88 percent of the total United States cotton consumption was taken by mills in the cotton-growing States. In this group North Carolina has consistently ranked first in value of textile-mill products among the Southern States, with Tennessee, Virginia, and Maryland included among the eight leaders. The huge raw cotton market of Memphis has substantial commercial bonds with the Carolina mill districts. There are 240 hosiery mills in North Carolina alone which produced 20 percent of the full-fashioned hosiery made in the United States. In the area which would be served by the Hickory airport there are 3 mills which produced 35 percent of the cotton cordage made in the world, and 82 hosiery mills.

The production of lumber and the manufacture of furniture in the territory proposed to be served provides another substantial community of interest between the various cities. The record shows that in 1941 these four States produced 3,219,000 board feet of lumber, of which 1,321,000 board feet came from North Carolina. Memphis, a proposed terminal on the route, ranks as the largest inland hardwood market and the largest producer of hardwood flooring in the United States.

In the manufacture of furniture the 55 plants located in the Hickory area gave that region third place in national ranking and it is one of the largest producers of dining room and bedroom furniture in the Nation. It is estimated that from 250 to 400 buyers from every section of the United States visit these plants every month of the year. Furniture and woodworking plants are also concentrated in the Greensboro-High Point area which would be served by the proposed route.

The production of tobacco provides a strong community of interest among the four States of North Carolina, Virginia, Tennessee, and

Maryland which would be served by the proposed Memphis-Piedmont-Washington route. Department of Agriculture statistics show that of the entire United States these four States have 59.2 percent of the farm value of land devoted to tobacco production, 56.7 percent of the tobacco acreage harvested, and 56.5 percent of the total 1942 tobacco production. The manufacture of tobacco products is naturally very closely allied with tobacco production. Thus the area to be served by the proposed route encompasses the largest tobacco-manufacturing region in the world. In 1942 the two States of North Carolina and Virginia produced 84.3 percent of the cigarettes produced in the United States and 51.5 percent of the smoking and chewing tobacco and snuff.

At the present time service is available between Memphis and Washington by American's route No. 4, via Nashville, Knoxville, Roanoke, and Lynchburg. Eastern provides Memphis-Washington service via Nashville and Louisville where connection is made with its route No. 47, and via Birmingham and Atlanta, and thence over its route No. 5 to Washington. Existing Memphis-Chattanooga air service is via connections between American and Eastern at Nashville. Air service from Memphis to North Carolina points such as Charlotte and Raleigh-Durham is available by connections at Atlanta between two different operations of Eastern. Memphis-Norfolk service is available by connections at Knoxville between American and PCA and this routing can also be used between Memphis and Raleigh-Durham.

Rail service from Memphis and Chattanooga to points in North Carolina and Virginia is inadequate because of the mountainous terrain and the circuitous routings required. Through rail service is available only between Memphis and Washington and between Chattanooga and Washington. In order to travel between Memphis or Chattanooga and Charlotte or Raleigh-Durham by rail, connections must be made at either Atlanta or Lynchburg. Connections at Lynchburg also afford the only routing between Memphis or Chattanooga and Norfolk. The fastest rail schedules require 18 hours 55 minutes from Memphis to Charlotte, 24 hours from Memphis to Raleigh, and 33 hours 5 minutes from Memphis to Norfolk. The fastest schedules from Chattanooga require 11 hours 5 minutes to Charlotte, 17 hours 15 minutes to Raleigh, and 18 hours 45 minutes to Norfolk.

In spite of the handicap of poor rail and air service in the past a substantial community of interest has grown up between Memphis and other cities in the southeast. The 1933 rail figures show Memphis-Chattanooga rail traffic as 8,260 passengers and Memphis-Washington rail traffic as 2,678 passengers. Memphis rail traffic exchanged with Norfolk, Raleigh-Durham, and Charlotte was 207, 299, and 200 passengers, respectively. Chattanooga rail traffic to and from Washington amounted to 2,519 passengers, as compared with 204 to Norfolk, 101 to Raleigh-Durham, and 602 to Charlotte. Charlotte traffic with Washington reflected the good quality of rail service and amounted to 6,410 pasengers. Charlotte-Norfolk rail passengers totaled 1,552, and Charlotte-Raleigh-Durham 2,613. Traffic was also substantial between Raleigh-Durham and Washington, i. e., 8,564 passengers, and very large between Raleigh-Durham and Norfolk, i. e., 29,250 passengers.

The air traffic figures during the 3 survey months also reflected substantial traffic between Washington and points where through service was available but in all 3 months Chattanooga-Washington traffic made a very poor showing, there being only 7 passengers in November 1939, 13 passengers in September 1940, and 10 passengers in March 1941.

The need for a Memphis-Piedmont-Washington service springs largely from the complete inadequacy of passenger service which has resulted in such a meager flow of passenger traffic in the past. The economies of the areas involved are such that with adequate transportation facilities a great deal of traffic might be expected. As previously pointed out, one of the strongest indices of the community of interest which is available is the cotton industry. The area of North Carolina centered around Charlotte, Greensboro, and Raleigh is a heavy consumer of cotton grown elsewhere. Most of the consumption of raw cotton is by mills in the southeastern portion of the United States. They draw from the region to the west as the source of their supply. Figures with respect to North Carolina are particularly impressive, for they show that in 1942 there were produced in the State 727,671 bales of raw cotton and that there were consumed by the mills within that State a total of 2,832,380 bales. In other words it was necessary for North Carolina mill operators to import from other States a total of 2,104,619 bales of raw cotton. This was the largest deficit of any of the cotton-milling States.

Chattanooga is surrounded within a 50-mile radius by 28 other mill towns having 150 mills. Charlotte is surrounded within a 50-mile radius by 63 other mill towns having 283 cotton mills. Raleigh-Durham are surrounded within a 50-mile radius by 43 other mill towns having 92 cotton mills. Norfolk is not a mill town but is an important port for the shipment of cotton and cotton products.

Certain other indices indicate a community of interest beyond what is apparent from the past volume of passenger traffic. For example, the estimated annual telephone calls between Chattanooga and Charlotte during 1944 were 3,120 and between Charlotte and Raleigh were 24,150. Hotel registrations show a volume of travel substantially in excess of the 1933 rail travel. Hotel surveys made by Chicago and Southern resulted in estimates of annual hotel registrations in various cities along the proposed route. It was estimated that annual registrations at Chattanooga from Washington amounted to 5,446 guests and annual registrations in Washington from Chattanooga amounted to 7,986 guests. Charlotte residents registered annually in Chattanooga hotels were estimated at 1,345 and Chattanooga registrations in Charlotte hotels at 1,562. Registrations in Charlotte from Memphis were estimated at 2,840 a year and registrations in Memphis from Charlotte at 968 a year. These figures clearly show that since 1933 a substantial movement of traffic has been developed between Tennessee and the North Carolina-Virginia area. It is not possible to determine how this traffic moved but the fact that people did travel in the face of the difficulties of surface transportation is an indication that convenient and expeditious air service would find a substantial market along the proposed route.

Memphis had a 1940 population of 292,942. It is the center of considerable manufacturing, having 168 establishments with prod-

ucts which were valued at more than $168,000,000 in 1939. It is the largest spot-cotton market in the world, with 175 members of the Memphis cotton exchange. More than 2,000,000 bales of cotton valued at $226,000,000 move through Memphis annually. An equal amount is sold which does not pass through the city but is handled by the Memphis exchange. The record shows that about one-third of the cotton production of the country is marketed through Memphis. Memphis is presently served by Braniff, Chicago and Southern, American, and Eastern. This pattern of service gives Memphis direct service to the west, southwest, south, southeast, northeast, and north, but no service directly eastward to Chattanooga and the Carolinas.

Chattanooga, the third largest city in Tennessee, is located on the Tennessee River in the southeastern corner of the State and is the headquarters of the Tennessee Valley Authority. Its importance as a manufacturing center has been greatly enhanced by the latter development. More than 450 industrial plants in Chattanooga and vicinity produce upward of 1,500 different articles from lumber, textiles, and iron. In addition the scenic and tourist attractions of Chattanooga and vicinity are important. Five Civil War battlefields and the $36,000,000 Chickamauga Dam are located in the immediate vicinity. The National Park Service reported that during the fiscal year ended June 30, 1941, more than 422,000 persons visited the national parks in that area.

The importance of Charlotte has previously been noted. The record shows that Charlotte's prominent position in the textile world gives that city a community of interest with the Tennessee cities of Memphis and Chattanooga. Other important cities in the Carolinas which have a community of interest with Chattanooga and Memphis and which have heretofore been mentioned are Spartanburg, Greenville, Winston-Salem, Greensboro, High Point, and Raleigh-Durham.

Our study of the record leaves no doubt that the public convenience and necessity require a direct air transportation service between Memphis, Chattanooga, and the Piedmont area. In order to determine how this service can best be performed we will examine the proposals of each of the carriers applying for the route.

Chicago and Southern's proposal would involve the establishment of approximately 1,000 new route miles between Memphis, the Piedmont, and Washington. Chicago and Southern asserts that an important factor to be borne in mind in connection with the need of the cotton interests for the Memphis-Piedmont service is that Chicago and Southern does not propose an operation limited to the Memphis-Piedmont area as do Eastern and PCA. It proposes to connect by direct one-carrier service the principal cotton-producing and marketing centers of the south and southwest such as Memphis, Greenwood, Miss., Little Rock, Pine Bluff, and El Dorado, Ark., Shreveport, La., and Houston with the principal textile mill centers of the Piedmont region, i. e., Greenville, Spartanburg, Charlotte, Winston-Salem, Greensboro-High Point, and Danville.

In considering the desirability of additional service between points east of Memphis and points west of Memphis, it should be noted that there are at the present time four services crossing the Mississippi from the area under consideration in this proceeding. Eastern's route

No. 5 connects the southeast with points west of the Mississippi through New Orleans. Delta's route No. 24 does likewise through Jackson. American's route No. 4 provides a like service through Memphis, and also by an alternate routing directly between Nashville and Oklahoma City.

It seems clear from the record in this case that there is no need for additional service through Memphis to connect the area west of Memphis served by Chicago and Southern with the area east thereof. The principal cities south and west of Memphis served by Chicago and Southern are Jackson, New Orleans, Little Rock, Shreveport, and Houston. New Orleans, Houston, and Little Rock now have direct one-carrier service to and from points north and east via Eastern or American. The record shows that the traffic between Jackson and Shreveport and points east of Memphis which would be served by Chicago and Southern has not been appreciable and already has one-carrier service to and from the Piedmont area via Delta. It is apparent from the record that service to points west of Memphis is not required to serve the needs of the cotton community of interest. In view of the foregoing and all the facts of record, we find that Chicago and Southern's Memphis-Piedmont-Washington proposal is not required by the public convenience and necessity.

As previously indicated, Eastern and PCA propose to extend their routes from the Piedmont to Memphis and to Washington. We have hereinbefore considered Eastern's proposal to serve Roanoke, Lynchburg, and Danville, and have found that Danville should be included as an intermediate point on Eastern's route No. 5. PCA requests the extension of route No. 51 to Washington via Lynchburg and Charlottesville, and via Richmond. For reasons hereinafter stated, we have authorized Piedmont Aviation to serve Lynchburg and Charlottesville on a local or feeder route which we believe to be more in the public interest than the route proposed by PCA. The record shows, however, a substantial need for extending PCA's route No. 51 from Rocky Mount to Washington via Richmond. PCA already operates between Rocky Mount and Washington over a circuitous routing via Elizabeth City, N. C., and Norfolk. In the past a substantial number of passengers have moved over a combination of PCA's routes Nos. 51 and 14 to Washington, and the cutoff from Rocky Mount to Richmond and Washington would enable that carrier to provide a fast usable service between its route No. 51 cities and Washington and Richmond.

Rocky Mount had a 1940 population of 25,568. Textile manufacturing is the principal industry but there are many others including cotton, ginning, and the manufacture of lumber and timber products. Richmond, with a metropolitan population in 1940 of 245,674, is the capital and largest city in Virginia. It is the financial and commercial metropolis for a large area of the south, and the leading manufacturing city of Virginia. Richmond's principal industry is tobacco and tobacco products. As the seat of the fifth district Federal Reserve Bank, its financial community of interest is wide. The extension of PCA's route No. 51 from Rocky Mount to Richmond and Washington will not only afford Richmond direct service to Rocky Mount, and other route No. 51 cities, but will also provide Richmond with first direct one-carrier service to PCA's route No. 14 cities of Pittsburgh, Buffalo, N. Y., Youngstown, Akron, and Cleveland, Ohio, Detroit,

Mich., Chicago, Ill., and Milwaukee, Wis. Accordingly, we find that the public convenience and necessity require the extension of PCA's route No. 51 from Rocky Mount to Washington via Richmond.

Hickory, N. C., has no air service at the present time. The importance of Hickory as a furniture manufacturing center has been previously noted. In addition, Hickory has a strong community of interest with other cities on route No. 51. We find therefore that Hickory should be included as an intermediate point on PCA's route No. 51.

Winston-Salem, with a 1940 metropolitan population of approximately 110,000, is the world's largest tobacco-manufacturing center. In addition to the finished tobacco products, such as cigarettes and smoking and chewing tobacco, there are several large-leaf tobacco companies located there which are engaged in curing or drying, stemming, processing, and storing leaf tobacco for manufacturers in other parts of the country. Winston-Salem is also one of the world's largest manufacturers of men's and boys' underwear. The record shows that Winston-Salem has a strong community of interest with other cities on PCA's route No. 51. Accordingly, we find that the public convenience and necessity require the inclusion of Winston-Salem as an intermediate point on PCA's route No. 51 between Greensboro-High Point and Hickory.

As heretofore indicated, the record shows a need for direct air service between Memphis, Chattanooga, and the Piedmont area. In order to determine the best manner in which this service can be provided, it is necessary to analyze the proposals of both Eastern and PCA. Eastern's route No. 5 extends from New York and Washington to Richmond, Raleigh-Durham, Greensboro-High Point, Winston-Salem, Charlotte, and thence southwest to Atlanta, New Orleans, and other points. Eastern's route No. 10 operates from Memphis to Muscle Shoals, at which point it branches off to Nashville to the north and to Birmingham to the south. Huntsville is presently a temporary intermediate point between Muscle Shoals and Birmingham. If Eastern were extended from Greenville to Chattanooga and Muscle Shoals, a distance of 303 miles, through a combination of its routes Nos. 10 and 5 it could close the gap between Memphis and Chattanooga and at the same time provide these cities with direct service to other cities on its route No. 5.

PCA's route No. 51 as amended in this proceeding runs from Washington to Richmond and Rocky Mount, and from Norfolk to Elizabeth City, Rocky Mount, Raleigh-Durham, Greensboro-High Point, Winston-Salem, Hickory, Asheville, and Knoxville. PCA's route No. 55 extends from New York and Pittsburgh to Charleston, W. Va., Bristol, Knoxville, Chattanooga, and Birmingham. Huntsville is a temporary intermediate point between Chattanooga and Birmingham. If PCA were extended from Chattanooga to Memphis, a distance of 271 miles, it could through a combination of its routes Nos. 51 and 55 provide a Memphis-Chattanooga service heretofore found required, and at the same time afford direct service between these cities and other cities on routes Nos. 51 and 55. An examination of the proposals of Eastern and PCA reveals that the certification of Eastern would provide the cities of Greenville, Spartanburg, Charlotte, and Danville with direct service to Chattanooga and Memphis, cities which would

not be served by PCA's proposal. On the other hand, an extension of PCA's route from Chattanooga and Memphis would afford direct service to the cities of Knoxville, Asheville, Hickory, Rocky Mount, Elizabeth City, and Norfolk, cities which would not be served by Eastern, and at the same time give Memphis and Chattanooga direct service to Pittsburgh and other Great Lakes area cities now served by PCA.

Thus it can be seen that neither the extension of Eastern nor of PCA alone will adequately meet all of the needs of air transportation in this area. PCA requested authority to include Charlotte as an intermediate point on its route No. 51 and under the general clause in its application offered to provide service to Greenville and Spartanburg on this route. Eastern has also offered to serve Asheville on its route No. 5 or any other points the Board may wish to designate. The inclusion of Charlotte, Greenville, and Spartanburg on PCA's route No. 51 would expose Eastern's route No. 5 to diversion. Likewise, the addition of Asheville to Eastern's route No. 5 would provide a competitive service with PCA between Asheville and Winston-Salem, Greensboro-High Point, and Raleigh-Durham. The evidence of record will not justify the establishment of competing services which would result from the addition of Charlotte, Greenville, and Spartanburg to PCA's route No. 51 or from the inclusion of Asheville on Eastern's route No. 5. After careful study of the entire record, we conclude that the public convenience and necessity require the extension of PCA from Chattanooga to Memphis, and the extension of Eastern from Greenville to Chattanooga. By extending PCA and Eastern in this manner, Memphis and Chattanooga will be connected and, in addition, these cities will be afforded service with all of the cities on PCA's routes Nos. 51 and 55, as well as the cities on Eastern's route No. 5. Such extension will supply a much-needed service giving the cities of Asheville, Hickory, Winston-Salem, Greensboro-High Point, Raleigh-Durham, Rocky Mount, Richmond, and Norfolk first direct one-carrier service to Chattanooga and Memphis, and affording Charlotte, Greenville, and Spartanburg direct one-carrier service to Chattanooga and two-carrier connecting service to Memphis.[5] In this manner the entire Piedmont area will be provided with direct service to Chattanooga and Memphis with very little adverse effect upon existing carriers.

An additional factor which should be considered in extending PCA to Memphis is the strengthening of route No. 51. The extension of this route to Memphis on the west, and Washington on the northeast, will tap two terminals aggregating nearly twice the population and several times the economic strength of the present terminal cities, substantially strengthening route No. 51 which has never been a particularly strong route. The record shows that of the 38 airline routes or segments of longer routes east of the Mississippi River, route No. 51 ranks last, both in terminal city population and in total route population. In view of the foregoing considerations and all the facts of record, we find that the public convenience and necessity require the extension of PCA from Chattanooga to Memphis and the extension of Eastern from Greenville to Chattanooga.

[5] Charlotte, Greenville, and Spartanburg also have available one-carrier service to Memphis via Eastern's service through Atlanta.

As hereinbefore pointed out, Huntsville is a temporary stop on Eastern's route No. 10 and on PCA's route No. 55. Eastern is presently authorized to conduct operations over its route No. 10 from Nashville to Birmingham via Muscle Shoals. We will terminate the temporary authority of both Eastern and PCA, and in lieu thereof will designate Huntsville as an intermediate point on Eastern's route No. 10 alternate to Muscle Shoals between Nashville and Birmingham, and also designate Huntsville as an intermediate point on PCA's route No. 51 between Chattanooga and Memphis. In order that PCA may be able to conduct nonstop operations on various flights between Memphis and Chattanooga on the one hand and Asheville and other route No. 51 cities on the other, we will also designate the Knoxville-Chattanooga segment of route No. 55 as a portion of route No. 51.

LOCAL OR FEEDER SERVICE

In addition to the trunk-line proposals previously considered, the existing carriers and new applicants submitted plans for local or feeder-type service in the southeastern area. Each of the applicants prepared studies bearing upon the potential air traffic for the areas to which it proposes service, and many communities filed exhibits of factual data with respect to their economic characteristics, local-transportation facilities, and other factors bearing upon the need for air service. This material has been given careful consideration in determining the air transportation needs of the area under consideration.

Inasmuch as local service is proposed to each section of the southeastern area by a variety of routes, no two of which are identical, no useful purpose would be served by discussing each proposed route separately. The Board is directed by the Act to develop an air transportation system properly adapted to the needs of the commerce of the United States and of the Postal Service, and accordingly, it is incumbent upon us to determine what additional air services are needed in this area rather than the necessity for each of the proposed routes.

In previous opinions dealing with proposals for local service we have set forth certain guiding principles and policies which we intend to follow in the establishment of local service systems.[9] In those cases certificates issued to independent local feeder carriers were limited to a period of 3 years and were subject to the condition that the carrier serve each intermediate point on each schedule operated. Later[10] this condition was found to be unduly restrictive and was modified to permit shuttle flights between certain points, assuming of course that fully adequate service is provided to each certificated point. We will adhere to that policy here and the order will provide an appropriate method whereby such modification may be effected in proper cases. We will also follow our decision in the *North Central* case and withhold the issuance of certificates until a proper showing has been made that airport conditions will permit the operation of routes in substantial accordance

[9] *Rocky Mountain States Air Service*, 6 C. A. B. 695 (1946); *West Coast Case*, 6 C. A. B. 963 (1946); *New England Case*, 7 C. A. B. 27 (1946).

[10] *Pioneer A. L. Amendment*, 7 C. A. B. 469 (1946); *Texas Oklahoma Case*, 7 C. A. B. 481 (1946); *North Central Case*, 7 C. A. B. 639 (1946).

with our intentions. In the present proceeding, we have considered *inter alia* the advantages of air transportation to the smaller communities in the southeastern area, the nature of the traffic which could be developed, the probable cost to the Government, and the location of the proposed communities in relation to presently certificated airline cities.

The record in this case shows a need for two separate feeder services—one connecting various cities in the southern States of Mississippi, Alabama, Georgia, and South Carolina, and the other providing service in the Carolinas and Virginia, and extending westward to Louisville and Cincinnati.

Southern area.—In the southern area, there appears to be a need for local service between Memphis and Charlotte via Tupelo, Columbus, Tuscaloosa, Birmingham, Gadsden, Atlanta, Athens, Greenwood, Greenville, Spartanburg, and Rock Hill and other intermediate points, between Atlanta and Jacksonville, and between Columbus and Charleston, S. C.

Tupelo, with a 1940 population of 8,212, is the center of a trading area of approximately 163,000. It is the largest city in northern Mississippi, and has no air service at the present time, the nearest airline stop being Memphis, a distance of 106 miles. Its principal interests are with Memphis and Birmingham. Columbus, Miss., with a 1940 population of 13,645, is the trading center of a large agricultural section in the east-central part of the State. In 1939, the retail trade of Columbus was $5,017,000, while the value of its manufactured products amounted to $3,543,267. Columbus presently has no air transportation service, and the nearest certificated airline stop is Greenwood, a distance of 107 miles by highway. Tuscaloosa, with a 1940 population of 27,493, is the site of the University of Alabama, with a normal enrollment of about 3,500 students. The retail trade of Tuscaloosa in 1939 was $10,872,000, while its wholesale business amounted to $8,990,000. In 1939, there were 31 manufacturing establishments located there whose manufactured products amounted to $5,033,333. Postal receipts increased from $83,207 in 1939 to $151,031 in 1943. The nearest airline stop is Birmingham, a distance of 59 miles.

Birmingham, the largest city in Alabama, had a 1940 population of 267,583, and the population of the area within a radius of 25 miles was 509,553. It is presently served by Eastern, PCA, and Delta.

Gadsden, the county seat of Etowah County, had a 1940 population of 36,975, and is the fourth largest city in Alabama with a trading zone serving a population of approximately 250,000. Gadsden ranks second only to Birmingham in Alabama in industrial employment and production. In 1939, 33 manufacturing establishments within the corporate limits of the city produced goods valued at $51,738,675. Located near the city is Camp Sibert which was constructed to take care of 30,000 chemical warfare trainees. The city expanded considerably during the war, and it is anticipated that it will retain a good portion of this increase. It has no air service at the present time and the nearest airline stop is Birmingham, a distance of 62 miles.

Atlanta, the capital of Georgia, is the foremost commercial and industrial center of the southeastern region. Its trading area con-

sists of 60 surrounding counties with a 1940 population of 1,424,818. The 1940 population of Atlanta was 302,288, and the population of the area within a radius of 25 miles was 567,433. Atlanta is served by Eastern and Delta.

Athens, the county seat of Clarke County, is one of the leading cities of northeast Georgia. In 1944, it had a population of over 25,000. In addition to this resident population, Athens is the home of the University of Georgia and there is a transient population in connection with this institution of approximately 4,000 persons. Athens has well diversified industries, the principal one being the manufacture of textiles. Other industries include the production of cottonseed oil, bricks, tile, marble and granite, fertilizer, hosiery, and coffee. In Clarke County there were 36 manufacturing establishments in 1939 producing goods valued at over $7,000,000. Athens has no air service at the present time, the nearest stop being Atlanta which is 72 miles away by highway.

Greenwood, S. C., is located in Greenwood County, and is the chief trading center of the western section of the State. The 1940 population of Greenwood was 13,018, while the population of Greenwood County was 40,082. The trading area of Greenwood comprises a radius of 50 miles, with a population of 160,000. There are various manufacturing industries located in Greenwood and Greenwood County. The 1943 textile payroll for the city was $5,304,000, while the payroll for Greenwood County was $15,000,000. In 1940 there were 20 wholesale establishments in Greenwood, with sales amounting to nearly 2½ million dollars, and 262 retail establishments with sales amounting to $6,372,000. Greenwood presently has no air transportation service, and the nearest airline stop is Greenville, a distance of 54 miles.

Spartanburg had a 1940 population of 32,249. In 1939 retail sales within a 25-mile radius of Spartanburg amounted to $38,129,000, and wholesale sales to $26,392,000. Greenville had a 1940 population of 34,734. Within a 25-mile radius the 1940 population was 175,326. Retail sales in 1939 amounted to $43,957,000, and wholesale sales during that year amounted to $63,555,000. Spartanburg and Greenville are presently served by Eastern and Delta. Rock Hill, S. C., had a 1940 population of 15,009, an increase of 32 percent over 1930. It is an important textile city which annually produces manufactured products worth over $20,000,000. It has no airline service and the nearest stop is Charlotte, a distance of 27 miles.

Charlotte is the largest city in the Carolinas and the leading industrial and financial center in that area. The 1940 census shows that Charlotte had a city population of 100,899 and a metropolitan district population of 112,986. The estimated civilian population of the surrounding counties served by Charlotte as of November 1, 1943, was 146,168. Charlotte is now served by Eastern.

A route from Memphis to Charlotte via Tupelo, Columbus, Tuscaloosa, Birmingham, Gadsden, Atlanta, Athens, Greenwood, Greenville, Spartanburg, and Rock Hill would provide a needed service for the cities of Tupelo, Columbus, Tuscaloosa, Gadsden, Athens, Greenwood, and Rock Hill, which have no air service at the present time. Tupelo, Columbus, and Tuscaloosa, have a substantial community of interest with Memphis, Birmingham, and Atlanta, and Gadsden has an interest with both Birmingham and Atlanta. The section between

Atlanta, Greenville, and Spartanburg includes much of Georgia's granite and textile industries. The density of this industry increases progressively between Atlanta and Greenville and Spartanburg, resulting in a strong community of interest between Atlanta, Athens, Greenwood, Greenville, and Spartanburg. The extension of the route from Spartanburg to Charlotte via Rock Hill will provide a strong terminal in Charlotte, and also give Athens, Greenwood, and Rock Hill direct service to that city, as well as to Atlanta, Greenville, and Spartanburg, which they do not now have. In view of the foregoing, we find that the public convenience and necessity require a route from Memphis to Charlotte via Tupelo, Columbus, Tuscaloosa, Birmingham, Gadsden, Atlanta, Athens, Greenwood, Greenville, Spartanburg, and Rock Hill.

The record shows a need for local service between Atlanta and Jacksonville via LaGrange, Columbus, Albany, Moultrie, and Valdosta. LaGrange is located in the extreme western section of Georgia on the Chattahoochee River, 58 miles southwest of Atlanta and 40 miles north of Columbus. It serves as a distribution center for an extensive agricultural industry in the area. The 1940 population of LaGrange was 20,038 and the population of the area within a radius of 25 miles was 118,455. Postal receipts increased from $51,923 in 1935 to $123,758 in 1944. The principal industries in LaGrange deal with textiles and lumber and timber products. There are 11 important manufacturing companies located in the city. Although rail service between LaGrange and Atlanta is satisfactory, such service between LaGrange and Columbus, Albany, Moultrie, Valdosta, and Jacksonville is slow. LaGrange presently has no air service and the nearest certificated airline stop is Columbus, a distance of 50 miles by highway.

Columbus, the county seat of Muskogee County, had a 1940 population of 52,280, and the population of the area within a radius of 25 miles was 97,353. Columbus is presently served by Eastern but has no usable air service to any of the cities on the proposed route except Atlanta.

Albany, the largest city in south Georgia, is located 150 miles south of Atlanta and 170 miles northwest of Jacksonville. Its 1940 population was 19,055, and the population of the area within a radius of 25 miles was 76,478. There are 20 large industries located in Albany which are engaged in the manufacture, production, or processing of various products, including cotton gins, peanuts, meat, textiles, lumber, fertilizer, cigars, and pecans. Rail service to Valdosta and Jacksonville is circuitous and requires a transfer. Albany is a certificated point on Eastern's route No. 10 between Miami and Chicago, but has no air service to any of the cities on the proposed route except Atlanta. Such a route would give Albany direct service to Moultrie, Valdosta, Jacksonville, Columbus, and LaGrange, cities with which it has a substantial interest.

Moultrie had a 1940 population of 10,147, and the population of the area within a radius of 25 miles was 68,903. Postal receipts increased from $42,514 in 1936 to $87,815 in 1944. There are eight large manufacturing industries in Moultrie engaged in the production of various commodities. Rail service to Columbus, Atlanta, Valdosta, and Jacksonville is circuitous and requires connection. There is presently no

air service at Moultrie, and the nearest airline stop is Albany, a distance of 46 miles by highway.

Valdosta is located in south central Georgia, 102 miles west of Jacksonville and 200 miles south of Atlanta. The city serves a diversified farming and forestry producing area. The 1940 population of Valdosta was 15,595, and the population of the area within a radius of 25 miles was 158,327. Rail service to Moultrie, Albany, and Columbus is circuitous and unsatisfactory. Valdosta is served in an east-west direction between Tallahassee and Jacksonville by National, but has no air service to the north where it has a community of interest with Moultrie, Albany, Columbus, and Atlanta.

Jacksonville, a principal trade center for southern Georgia cities, including Valdosta, Moultrie, and Albany, had a 1940 population of 173,065, and the population of the area within a radius of 25 miles was 225,225, an increase of 59 percent over 1930. Eastern, Delta, National, and Orlando are authorized to serve Jacksonville but no service is provided between Jacksonville and such cities on the proposed route as LaGrange, Columbus, Albany, and Moultrie.

The area between Columbus and Jacksonville includes most of southern Georgia's rich diversified farming and forestry products section. Columbus is an important manufacturing and trade center, attracting commerce from Albany, Moultrie, and Valdosta. The cities of Columbus, Albany, Moultrie, and Valdosta have a strong community of interest with Jacksonville because of tourist traffic and the latter's importance as a large industrial city and seaport. In view of the foregoing considerations, we find that the public convenience and necessity require a route from Atlanta to Jacksonville via LaGrange, Columbus, Albany, Moultrie, and Valdosta.

The record further shows a need for local service between Columbus, Ga., and Charleston, S. C., via Macon, Augusta, and Orangeburg. Macon had a 1940 population of 57,863, and a 25-mile radius population of 154,021. There are approximately 40 branch offices of the Federal Government located in Macon and also several colleges and universities. Macon's principal industries are textiles, food processing, ceramics, clothing, lumber, and millwork. Macon is the center of Georgia's vast peach-growing industry and there are approximately 175 manufacturing plants in the Macon area. Macon is an intermediate point on Eastern's route No. 10 between Atlanta and Jacksonville but has no air service to Columbus, Augusta, or Charleston.

Augusta, the county seat of Richmond County, is located in the east central portion of Georgia at the head of navigation of the Savannah River. It is the third largest city in the State, having a 1940 population of 87,809, an increase of 45.5 percent over 1930. The estimated metropolitan population in 1943 was 111,869. The climate and facilities of the city make it a natural center for tourist traffic. Augusta is now served by Delta but has no direct air service to Macon and Columbus.

Orangeburg, S. C., the county seat of Orangeburg County, had a 1940 population of 10,521, while the population of the county was 63,797. Orangeburg County ranks first of the State's 46 counties in the production of corn, cotton, sweet potatoes, and grain. Its annual income from agriculture is approximately $9,000,000. There are 16 manufacturing establishments located in Orangeburg with

annual payrolls of approximately $1,525,000. Orangeburg presently has no air transportation service and the nearest air-line stop is Columbia, a distance of 45 miles by highway.

Charleston, S. C., had a 1940 population of 71,225, and the population of the area within a radius of 25 miles was 130,918. Charleston is now served by Eastern, Delta, and National.

A route from Columbus to Charleston would connect for the first time the cities of Columbus and Macon with Augusta, Orangeburg, and Charleston. It would also provide Orangeburg an outlet to Augusta and Charleston, cities with which it has a substantial community of interest. In view of the foregoing we find that the public convenience and necessity require the establishment of a route from Columbus to Charleston via Macon, Augusta, and Orangeburg.

Several of the routes proposed in the *Southeastern States* case involve service to points in Mississippi, such as Greenwood, Jackson, Meridian, Laurel, Hattiesburg, and Gulfport-Biloxi, and extend into Alabama and Georgia. In addition, the application of Southern Bus Lines, while proposing service which extends into the southeastern area to such points as Louisville, Memphis, and Atlanta, involves routes essentially in the area contemplated by the *Mississippi Valley* case, Docket No. 548. In order that the Board may be in a position to determine whether service to cities in the Mississippi area should be provided as part of the feeder system established in the *Southeastern States* case or as part of a separate system in the Mississippi Valley area, we will defer decision with respect to service in this area for further consideration with the *Mississippi Valley* case. Likewise, the application of Southern Bus Lines will also be deferred.

Local service in the Carolinas and Virginia.—Our study of the record leads us to the conclusion that local service connecting cities in the Piedmont area with Louisville and Cincinnati is justified. There is also a need for a route between Cincinnati and Norfolk via various intermediate points, and a route from Roanoke to Danville, Greensboro, Raleigh, Fayetteville, and Wilmington.

The record is replete with evidence on the shortcomings of rail and highway transportation in the southeastern area. This evidence shows the lack of sufficient main arteries of traffic in an east-west direction, the slow and circuitous character of many of the existing traffic channels, and the absence of fast and convenient schedules on some rail and bus lines having through service.

Evidence was submitted showing the southern Appalachians, uncut by important streams or gaps to facilitate cross-mountain connections, to be a substantial barrier to surface travel between the west and the east. Transappalachian railroad and highway crossings to the Piedmont and Coastal Plain areas from the west are particularly circuitous and inadequate and in order to cross the mountains it is necessary to travel on trunk-line routes via certain Virginia cities and Washington to the north and thence westward or via Atlanta to the south and thence to the west. Moreover, the existing transportation pattern leaves the region east of the mountains isolated from the west and important points within this region without adequate connections among themselves.

Thus, except for a two-pronged branch line of the Southern Railway which converges at Asheville, a considerable part of the Piedmont

from Virginia to Georgia is without a major rail line crossing the mountains directly from the west. Since the principal railroad routes parallel the mountains, the people of this area must necessarily rely heavily upon bus transportation for travel within the Piedmont and between the Piedmont and coastal cities. Both the rail and bus cross-mountain travel is unusually slow.

Applicants for service, as well as various cities, presented exhibits showing the slow and circuitous surface travel into the Piedmont area from leading gateway cities such as Louisville and Cincinnati. These exhibits show the rail time from Cincinnati to Raleigh to be 16 hours as compared with proposed airtime of approximately 4 hours. Between Louisville and Wilmington the best railtime is 36 hours 45 minutes, and the best bus time is 33 hours 25 minutes. Airtime of 4 hours 39 minutes has been proposed. Not only is the service from the Piedmont area to Louisville and Cincinnati slow and circuitous, but service within the Piedmont itself is inadequate. To illustrate, between Charlotte and Asheville the best railtime is 5 hours 10 minutes, and the best bus time is 4 hours 25 minutes; between Wilmington and Greensboro the best railtime is 10 hours 40 minutes, and the best bus time is 6 hours 35 minutes. Proposed airtime between Charlotte and Asheville is 38 minutes, and between Wilmington and Greensboro 1 hour 52 minutes.

There are numerous cities in the Carolinas which have a substantial community of interest between themselves and also require an outlet to Louisville and Cincinnati. Charlotte, the largest city in the Carolinas, and the leading industrial and financial center in that area, has been discussed heretofore. Other important cities are Raleigh, Greensboro, Winston-Salem, Bristol, Va./Tenn., Asheville, Fayetteville, New Bern, Wilmington, and Goldsboro. Raleigh is the capital of North Carolina and is the leading convention city of that State. The pair of cities known as Raleigh-Durham which are served by a joint airport had a combined city population in 1940 of 107,092 and a combined district metropolitan population of 179,227. Raleigh is the county seat of Wake County and Durham is the county seat of Durham County. Both cities are important industrial centers engaged primarily in the manufacture of tobacco, cotton, and lumber products. Raleigh-Durham is a certificated stop on Eastern's routes Nos. 5 and 6, and PCA's route No. 51.

Greensboro had a 1940 population of 59,000 and within a radius of 25 miles there were 224,896 people. Guilford County, in which Greensboro is located, is the largest county in the State of North Carolina with a total of 154,000 inhabitants. High Point, which is served through the joint Greensboro-High Point airport, had a 1940 population of 38,495. High Point is stated to be the hosiery manufacturing and sales center of the south. Twenty hosiery mills located at High Point have a daily capacity of 50,000 pairs of hose. High Point is also renowned as a furniture manufacturing and marketing center. Its furniture marts are visited by approximately 18,000 manufacturers, salesmen, and buyers each year. Greensboro-High Point is a certificated stop on Eastern's routes Nos. 5 and 6 and on PCA's route No. 51.

Winston-Salem, the largest tobacco-manufacturing center in the world, has been one of the fastest-growing cities in the United States

since 1920. From a population of 48,395 in that year the city grew to 75,274 in 1930 and by 1940 had increased to 109,833. Winston-Salem is presently served by Eastern's routes Nos. 5 and 6.

Goldsboro, the county seat of Wayne County, is a gateway to the eastern section of North Carolina. It is the terminal point on the Atlantic and East Carolina Railway which runs to New Bern and to Morehead City, N. C., a shipping point and coastal resort. Goldsboro is also the eastern terminus of the Greensboro-Goldsboro division of the Southern Railway, and is an intermediate point on the Atlantic Coast Line Railroad route between Wilmington and Richmond. In 1940 the population of the city proper was 17,274 and it is estimated that the 1944 population was approximately 28,000. Goldsboro has no air service at the present time and is virtually isolated because of poor rail facilities.

Fayetteville, the county seat of Cumberland County, had a 1940 population of 17,428. The Gulf Oil Company maintains storage tanks at Fayetteville which will accommodate approximately 10,000,000 gallons of gasoline and kerosene. The record shows that 45 manufacturing establishments in Cumberland County produced goods valued at $6,684,795 in 1939. Fayetteville has no air service at the present time.

Asheville is located in the foothills of the Smoky Mountains and is the center of an important vacation area attracting visitors from many sections of the country. The 1940 population was 51,310, and the population within a radius of 25 miles was 198,732. The record shows that Asheville has a substantial community of interest, not only with Louisville and Cincinnati, but with other cities in the Carolinas such as Charlotte, Fayetteville, and Wilmington. Asheville is served by PCA and Delta but has no direct air service to Bristol or the North Carolina cities of Charlotte, Fayetteville, and Wilmington.

Bristol, Va./Tenn., is served through the Tri-Cities airport, which also serves Johnson City and Kingsport, Tenn. The 1940 population of the Tri-Cities was 63,508, and the population within a radius of 25 miles was 223,034. Bristol is presently served by PCA and American but has no direct air connections with either Louisville or Cincinnati or with cities in North Carolina.

The 1940 population of New Bern was 11,815, and the estimated 1944 population was approximately 25,000. New Bern is presently served by National on its route No. 31, but has no air service to the west. Wilmington is the principal deep-water port in the State of North Carolina. In 1940 the population of Wilmington was 33,407, and the population within a radius of 25 miles was 70,486. Wilmington is presently served on National's route No. 31, but has no air service to Raleigh, the State capital, or other cities to the west.

Louisville, the largest city in Kentucky, had a 1940 population of 319,077, and a metropolitan population of 434,408. The tobacco industry alone gives Louisville a strong community of interest with cities in the Piedmont, including Winston-Salem, Raleigh, Durham, Goldsboro, and New Bern. Nineteen tobacco companies have plants at Louisville, and 56 manufacturers with headquarters there maintain up to 65 branches in other cities.

The community of Southern Pines-Pinehurst-Aberdeen, located in Moore County, is one of the famous resort centers of the Midsouth.

Guest registrations for 1940–41 were estimated at 18,000. Golf and tennis tournaments of national interest and steeple chase races held annually draw crowds estimated at 15,000. Southern Pines-Pinehurst-Aberdeen has no air service and rail transportation is surprisingly poor.

As previously indicated, there is no direct air service between Louisville and Cincinnati on the one hand, and Piedmont cities of Bristol, Winston-Salem, Charlotte, Greensboro, Raleigh, Fayetteville, New Bern, and Wilmington, on the other. The establishment of a route designating Louisville and Cincinnati as alternate terminals and extending into the Piedmont area would not only provide these Carolina cities with an outlet to Louisville and Cincinnati, but would furnish a much-needed local service between these cities themselves. In view of the foregoing consideration, we find that the public convenience and necessity require establishment of a route as follows: Between the alternate terminal points Louisville and Cincinnati via the intermediate points Lexington, Ky., Bristol, Va., and beyond Bristol (a) via the intermediate points Asheville, Charlotte, Southern Pines-Pinehurst-Aberdeen, Fayetteville, and the terminal point Wilmington, N. C., and (b) beyond Bristol via the intermediate points Winston-Salem, Greensboro-High Point, Raleigh-Durham, Goldsboro, and the terminal point, New Bern, N. C. The carrier operating this route will also be permitted to provide seasonal service to Morehead City, such service to be performed each year between May 1 and October 31.

The record shows that a substantial community of interest exists between Cincinnati and Norfolk via the intermediate points of Portsmouth, Ashland-Huntington, Charleston, Beckley, Princeton-Bluefield, Roanoke, Lynchburg, Charlottesville, and Richmond. In the *Great Lakes Florida* case, *supra*, PCA, Eastern, Delta, State, and Virginia Central Airlines requested authority to conduct operations between Chicago and Norfolk or between Cincinnati and Norfolk. In that decision, the Board found a need for local service between Charleston, Roanoke, Lynchburg, Richmond, and Norfolk. In discussing the applications for Chicago-Norfolk service, the Board indicated that it may not be in the public interest to duplicate PCA between Chicago and Norfolk, American between Chicago and Charleston, and TWA between Chicago, Fort Wayne, and Columbus, merely to provide the needed Charleston-Norfolk local service and the Chicago-Cincinnati-Norfolk applications were deferred for further consideration with the instant proceeding. The record in this case again demonstrates a need for local service between Charleston and Norfolk. However, we will designate Beckley and Princeton-Bluefield as intermediate points on the route between Charleston and Roanoke, and add Charlottesville as an intermediate point between Lynchburg and Richmond, and the public convenience and necessity require extension of this route from Charleston to Cincinnati via Ashland-Huntington and Portsmouth. Such a route from Cincinnati to Norfolk via the intermediate points mentioned above would provide air service for the first time for Portsmouth, Beckley, Princeton-Bluefield, and Charlottesville. In addition, it would connect Cincinnati and the coal-producing areas around Huntington and Charleston with Norfolk, one of the most important ports on the Atlantic coast. Coastwise shipments from Norfolk in 1935 amounted to nearly 9 million tons valued at approximately $345,000,

000. Of this figure the bulk was bituminous coal totaling approximately 8 million tons, which indicates a strong community of interest with West Virginia, the second largest bituminous coal-producing State in the country. In view of the foregoing considerations, we find that the public convenience and necessity require the establishment of a route from Cincinnati to Norfolk via Portsmouth, Ohio, Ashland-Huntington, Charleston, Beckley, and Princeton-Bluefield, W. Va., Roanoke, Lynchburg, Charlottesville, and Richmond, Va., such route to be operated as a part of the local or feeder system established in the Piedmont area. We thus find that the public interest will be better served by the establishment of a local or feeder route between Cincinnati and Norfolk than by providing a trunk-line operation between Chicago and Norfolk or between Cincinnati and Norfolk as proposed by PCA, Eastern, and Delta in the *Great Lakes-Florida* case. Under the circumstances, the applications of PCA, Eastern, and Delta seeking Chicago-Cincinnati-Norfolk service, which were deferred in the *Great Lakes-Florida* case, will be denied.

A route between Roanoke and Wilmington, N. C., via Danville, Greensboro-High Point, Raleigh-Durham, and Fayetteville, will supply a needed local service between these cities, and at the same time link together the Cincinnati-Norfolk route with the feeder system established in the North Carolina area. Danville will be connected with Roanoke, a major community of interest point, and will be given first one-carrier service with Charleston, W. Va., Cincinnati, Lynchburg, and Charlottesville, cities with which it has a community of interest. Danville is the industrial and commercial center of the flue-cured, bright-leaf tobacco section of Virginia, and is one of the principal tobacco markets in the country. Tobacco gives it a strong community of interest with Durham where 24 percent of the Nation's cigarettes are made, and with eastern North Carolina tobacco markets at or near Fayetteville and Goldsboro. The route will also link the North Carolina cities of Wilmington and Fayetteville with Raleigh, the State capital, and with Greensboro, High Point, and Winston-Salem, important industrial centers in this area. Accordingly, we find that the public convenience and necessity require a route from Roanoke to Wilmington, N. C., via Danville, Va., Greensboro-High Point, Raleigh-Durham, and Fayetteville, N. C.

SELECTION OF CARRIERS

Mississippi, Alabama, Georgia, and South Carolina.—Cotton Belt, Southeastern Air Express, Southern Airways, and Prairie propose service in this area. The proposal of Southern Bus Lines also extends into this area, but for reasons hereinbefore stated, this application is being deferred. Prairie seeks three routes—one between Starkville, Miss., and Jackson, one between Starkville and Birmingham, and one between Starkville and Memphis, with no intermediate points. The distances between the termini on these routes are 115, 117, and 147 miles, respectively. We have previously indicated [1] that in selecting carriers for local or feeder service it is necessary to establish a system large enough to constitute an economical operation. It can hardly be said that Prairie's proposal would meet this requirement. The appli-

[1] *North Central Case, supra.*

cant has not presented any plans indicating that it would or could operate a system such as that found to be required in this proceeding. Accordingly, the application of Prairie will be denied.

Cotton Belt proposes to transport mail and property only in pick-up service over four routes. The applicant submitted no estimates of the revenues which would be derived from its proposed pick-up service. Nor were any detailed estimates made as to the volume of mail which would be generated or the amount of mail pay necessary to sustain the operation. Moreover, Cotton Belt has failed to show that it has an organizational plan which would provide personnel having sufficient transportation experience to conduct satisfactorily the proposed operation, or that it has adequate capital resources to inaugurate such service. Under the circumstanes, we find that Cotton Belt's application should be denied.

The record leaves no doubt that both Southeastern Air Express and Southern Airways are fit, willing, and able to conduct the service hereinbefore found required. Both Southeastern and Southern have demonstrated unusual interest in the establishment of local service, and each has submitted comprehensive plans for the operation of such a service. In each case the individuals primarily interested in the applications have a background in aviation.

It is apparent from the testimony of Southeastern's president, however, that the selection and organization of personnel to conduct operations have been left almost entirely for further determination. Apparently all that has been decided is that Mr. Raymond will be president, and that Mr. Duncan, a Washington, D. C., aeronautical consultant, will be retained on a part-time basis to advise and assist the management in setting up an organization for operating its service. Southeastern placed emphasis on the testimony of its president with respect to aviation activities and experience of "our whole group" and exhibits were submitted by that applicant in regard to the activities of Southeastern Air Service, Inc., Columbus Airways, Raymond-Richardson Aviation Co., and Raymond Aircraft Company. Outside of Mr. Raymond, however, there is no showing that any of the individuals operating or connected with any of these organizations will be engaged in the active conduct of Southeastern's operations if it is granted a certificate. Southeastern's situation in regard to the selection and organization of personnel is to be contrasted with Southern, whose executive organization includes men who are particularly well qualified by executive experience and business background in the field of aviation in the area under consideration. With one exception, each officer and director of the company is a licensed pilot, and all have had administrative or executive experience in the operation and maintenance of aviation enterprises, including fixed-base operations and primary flight schools. Frank W. Hulse, president and principal stockholder of Southern, has been actively engaged in aviation since 1927. He is also president of five other affiliated companies engaged in some phase of aeronautics in the southeastern part of the country. Prior to the war Southern Airways and the affiliated companies were the largest fixed-base operators in the southeast. They also performed extensive services during the war for the Army. The record leaves no doubt that the broader experience and better organizational planning of Southern require the selection of that applicant to operate the

routes hereinbefore found required. Accordingly, we find that the public convenience and necessity require the selection of Southern to conduct local or feeder services in the Mississippi, Alabama, Georgia, and South Carolina area, and that Southern is fit, willing, and able properly to perform such services.

Southern has filed an application under section 408 for approval of certain relationships between Southern Airways, Inc., and other affiliated corporations engaged in various phases of aeronautics and Frank W. Hulse. The application sets forth in detail the interlocking directorships, and stock ownership within the associated companies. The stockholders are substantially the same in each of the five corporations and the directors and executive officers are also substantially the same in each corporation. As indicated in appendix No. 2, the associated companies have been engaged in aircraft and engine sales, service, overhauling, charter flights, and charter instruction, and applicant plans to use the facilities for the maintenance and overhaul of aircraft. On the basis of the facts of record, we find that the relationship existing between Southern and the five affiliated companies does not present any question of monopoly or restraint of competition and will not be inconsistent with the public interest. We are therefore of the opinion that the relationship should be approved. However, as we have stated in prior opinions[12] our approval of such relationships will be granted subject to such reasonable conditions as will adequately protect the public interest in the future.

Upon the facts of record, we find that the relationships between Southern Airways, Inc., and said affiliated corporations, or between Southern Airways, Inc., and said Frank W. Hulse, shall be limited to those in which the price of any unit of property involved does not exceed $200, and the total annual expenditures involved in such commercial transactions by any of the parties shall not exceed $10,000 collectively, unless the prior approval of the Board shall have been obtained. A statement of all transactions between the parties shall be submitted by Southern with its annual report each year.[13]

North Carolina, Virginia, West Virginia, and Kentucky.—The applications of Gillespie, Commonwealth, Atlantic and Carolina Airways, Virginia Airways, South East Airlines, Inc., Seaboard Air Transport, Piedmont Airlines, and State Airlines include proposals to render service of a local and feeder character in all or a portion of this general area. The Blue Grass application, which is also primarily a local and feeder service proposal, includes a series of routes in Kentucky, Tennessee, and Missouri, none of which correspond to those which we have found should be authorized. In addition to these applicants, there are before us the applications of Virginia Central Airlines, South East Airlines,[14] and State Airlines, which have been deferred from the *Great Lakes-Florida* case for consideration in connection with the instant proceeding.

The facts of record establish that Gillespie, Blue Grass, and Commonwealth meet the test of fitness, willingness, and ability. The routes proposed by these applicants are located essentially in West Virginia, Kentucky, Tennessee, and a portion of Ohio. While the

[12] *Florida Case*, 6 C. A. B. 765 (1946); *West Coast Case*, *supra*.

[13] Approval of the interlocking relationships shall continue, unless revoked by the Board, only so long as said Frank W. Hulse continues in uninterrupted tenure thereof.

[14] There is no connection between South East Airlines, Inc., and South East Airlines.

local service routes we have found required extend into West Virginia, Kentucky, and Ohio, the major portions of these routes are located in North Carolina and Virginia. For reasons outlined in prior decisions we believe that the operation of local or feeder services should be entrusted to individuals whose interests are centered in the area to be served. Gillespie's principal base of operations is in Tennessee, and Blue Grass is located in Kentucky. Commonwealth, which is not an operating organization, is a Louisiana corporation, and the principal officers of the company are located in Cincinnati. There are applicants in this case whose activities are conducted in, and who have close ties with, the area embracing a major part of the local route system herein prescribed and we conclude that award of a certificate to one of these companies would better serve the public interest than would an award to Gillespie, Blue Grass, or Commonwealth.

South East Airlines, Inc., was incorporated under the laws of North Carolina in September 1944. It seeks authority to conduct air transportation of persons, property, and mail over 10 routes and to operate a pick-up service for mail and express in Virginia, North Carolina, and South Carolina. Mr. R. B. Babington, president of applicant, is engaged in the insurance and mortgage loan business at Gastonia, N. C. He is president of the State Finance Company and the Gastonia Insurance Exchange, director of the Gastonia Mutual Building & Loan Association, and secretary-treasurer and also a member of the Gastonia Township Airport Commission. With the exception of its president, all of the officers and directors of South East Airlines, Inc., have had aviation experience. The evidence presented by South East with respect to the requirements of local service in this area does not reflect the study and planning of details as do the exhibits of some of the other applicants. No showing whatsoever was made for the need of this applicant's proposed service, the effect upon existing air services, or that its operations will show a justifiable expectation of success at a reasonable cost to the Government. We are convinced that other applicants in this area could better serve the public interest than this applicant.

Virginia Airways is the name of the aviation division of Virginia Stage Lines, Inc., a Virginia corporation operating motor vehicles over 1,737 miles of routes in Virginia and North Carolina, and extending to the District of Columbia. The routes proposed by Virginia Airways either connect with or parallel the motor bus routes of Virginia Stage Lines and associated motor carriers. A witness for the applicant testified that many advantages would be derived from the air-bus coordination, such as the joint use of terminal facilities, ticket sales agencies, and supervisory personnel, and from the possibility of motor transportation by bus from the city to the airport.

The record makes it clear that the driving force behind Virginia Airways is its president, Mr. S. A. Jessup, a highly successful Virginia businessman. There can be no doubt of his sincerity and good faith in desiring to establish an air transport operation. However, Virginia Airway has never been engaged in any phase of aeronautics, and from the standpoint of comparative fitness and ability we do not believe that this applicant is as well qualified to conduct local or feeder airline services as other applicants who have had substantial aviation experience and who will concentrate upon the development of their

air operations. Accordingly we find that the application of Virginia Airways should be denied.

Seaboard Air Transport was incorporated under the laws of North Carolina on July 31, 1943. It proposes three routes—Lumberton, N. C., to Norfolk, Lumberton to Columbia, and Knoxville to Wilmington. This applicant does not propose service to such North Carolina cities as Raleigh, Durham, New Bern, Winston-Salem, and Greensboro-High Point. While Seaboard could undoubtedly conduct a satisfactory service over the route which it has proposed, the evidence of record will not support a finding that it is capable of undertaking an operation of the scope and character we have found required.

As previously pointed out, the applications of South East Airlines, Virginia Central, and State were deferred from the *Great Lakes-Florida* case. State is also an applicant in the instant proceeding for essentially the routes it sought in the *Great Lakes-Florida* case. The presentation of South East Airlines in the *Great Lakes-Florida* case indicates that the officials and financial backers of this applicant are able and substantial businessmen from Spartanburg or vicinity. The applicant presented only one witness with a background of air experience. A review of his testimony leads to the conclusion that he has little realization of the risks involved in an undertaking of the type proposed by South East. To prove its financial ability, the applicant relied upon the testimony of Frank B. Vincent, an official of the Citizens and Southern National Bank of Spartanburg. The testimony of Mr. Vincent shows that there is no binding contract or written obligation on his part to finance South East's proposed operations. The absence of a definite showing as to financial support for the proposed service and the lack of a nucleus for an organization capable of establishing and maintaining a commercial air transportation service leads us to the conclusion that this company has failed to show its "fitness, willingness, and ability" within the meaning of the statute. Accordingly, the application of South East will be denied.

In attempting to establish a need for its proposed routes, Virginia Central relied for the most part on the business knowledge and experience of its secretary-treasurer, Mr. W. G. Burnette. Mr. Burnette testified that during the 19 years he has been connected with the traffic department of the Lynchburg Chamber of Commerce, he has examined many freight bills, bills of lading, and express receipts, quoted many rates, furnished routing instructions, and provided general traffic and transportation information. The three witnesses who testified for the company were the president, Mr. Abe Cohen, the vice president, Mr. W. W. Edmondson, and Mr. Burnette. None of these witnesses has had any airline experience, and only one has had aviation experience. The testimony of Mr. Edmonson, the operations witness, who is undoubtedly a well-qualified pilot and fixed-base operator, demonstrates that he is unfamiliar with airline operations. As in the case of South East, this company lacks the organizational development or aviation experience shown by other applicants before us. Accordingly the application of Virginia Central will be denied.

Atlantic and Carolina Airways proposes two routes within the State of North Carolina. The applicant submitted no estimates of anticipated revenues or expenses and its exhibits contain nothing more than the economic characteristics of the cities on its proposed routes. They

contain no information with respect to its fitness and ability or its financial qualifications. Mr. James F. Ficklen, the principal witness on behalf of this applicant, admitted that the group of men associated with the company have no other qualifications to run an airline except their general business experience. The applicant has proposed no tentative schedules, has given no indication of the amount of mail pay required to break even, and has made no studies of potential traffic. Under the circumstances, we find that the application of Atlantic and Carolina Airways should be denied.

The choice has thus narrowed down to State Airlines and Piedmont Aviation, and which of these two companies should be selected to conduct the proposed service presents a close and difficult question. Both have engaged in various phases of aeronautics for a period of years.

Piedmont Aviation was incorporated under the laws of North Carolina on July 2, 1940, and its principal offices are located at Winston-Salem. Piedmont has operated as a fixed-base operator at Winston-Salem since 1940, and has engaged in charter operations, aircraft rentals, sales, overhaul, and repairs, and in flight instruction. During the war, Piedmont conducted certain services for the Army, and also operated one of the leading CAA approved aircraft and engine overhaul repair stations in the southeast. Piedmont does not at the present time own any aircraft suitable for use in its proposed services, but it does own approximately 50 percent of the required furniture and fixtures, and all of the necessary shop equipment except a few special tools. At the time of the hearing Piedmont employed 4 pilots, 3 of whom had instrument ratings, 9 licensed mechanics, 28 specialized and unlicensed mechanics, and 1 licensed radio technician.

Piedmont's president, Mr. Davis, has been engaged in aviation activities dating back to 1934. In 1939 he became sales manager of Camel City Flying Service, and in connection therewith traveled extensively throughout the proposed territory demonstrating various types of aircraft. Mr. Davis served as vice president, treasurer, and director of Piedmont from July 1940 until June 25, 1943, when he became president. He presently holds a commercial pilot certificate and has logged more than 3,500 flying hours. Mr. Davis is a member of the North Carolina Aeronautics Commission.

State, incorporated in 1939, has an operating base at Charlotte and has been operating a charter service since April 1941. Its president, Mr. Gilbert, has undertaken extensive research into the problems and requirements of the territory, and into the details of feeder operations adapted to the territory.

Each applicant has shown an adequate financing program, and each has demonstrated an energetic interest in the conduct of the operations.[15] However, our study of the record leads to the conclusion that Piedmont should be selected to conduct the proposed service. As previously indicated, Piedmont conducted numerous wartime services for the Government. In August 1940 Piedmont started its first Civil Aeronautics Administration pilot training contract under the civilian flying training program. This was one of the first noncollege units, and Piedmont was selected as 1 of the 14 type A Civil Aeronautics Administration training centers to be established in the entire United

[15] See appendix No. 2.

States. In January 1942 Piedmont was awarded a contract by the Defense Supply Corporation to train Central American and South American students to become flight instructors. In April 1943 the company obtained a lease for operation of the Greensboro-High Point airport, at which it conducted an AAF aircrew indoctrination flight-training program in addition to the training programs being conducted at Winston-Salem. This contract was completed in June 1944. In March 1943 Piedmont was selected as one of the two cross-country training centers in the southern Civil Aeronautics Administration region. In conducting this program, it obtained valuable experience in aircraft operation similar in many respects to scheduled air-carrier service. In 1944 Piedmont conducted 41,875 miles of charter operations and over 26,000 miles in the first 5 months of 1945. Most of this mileage was flown in the territory here involved and all of this mileage was flown without a single accident.

Thus, while State's plans are built substantially around one man—its president, Mr. Gilbert—Piedmont's wartime experience and extensive charter operations have enabled it to obtain a well-rounded organization with key personnel who are thoroughly familiar with the operating conditions of the area involved. Although there is no doubt that State could obtain such personnel, it would require more time to set up airline operations than would a carrier whose personnel are qualified in this respect.

In view of the foregoing considerations and all the facts of record, we find that Piedmont should be selected to operate the routes hereinbefore found required, and that the applications of Atlantic and Carolina Airways, Virginia Airways, South East Airlines, Inc., Seaboard Air Transport, State Airlines, Virginia Central, and South East Airlines should be denied. Piedmont has also applied for air mail pick-up service over 15 routes in the general area under consideration. In view of our selection of Piedmont to operate persons, property, and mail service, its application for pick-up service will be denied since the applicant will be faced with the task of setting up its organization to inaugurate the new service, and all of its time will be required for this purpose.

Southern Aviation Corporation.—As indicated in appendix No. 2, Southern Aviation seeks a certificate authorizing air transportation of persons, property, and mail over six routes. At the beginning the applicant contemplates the inauguration only of air mail and air express pick-up service. Such service would be rendered for an initial period of at least 6 months until both the operation and routes have proved themselves. The record fails to show that the service proposed by Southern Aviation would result in any substantial improvement in mail service. There was no showing that applicant's proposed transportation of mail on the various routes would result in appreciable savings of time over mail moved by existing transportation facilities. While the type of route patterns proposed would permit contact with a maximum number of communities with a minimum of equipment, they provided little advantage in the expedition of mail from the points served to the gateways. Under applicant's proposed schedules, even with the circuit begun at earliest daylight hours, the morning flights could not effect delivery of mail at many of the intermediate points in time for opening of the day's business. Likewise,

with the reverse afternoon flights beginning in the early afternoon hours mail would be deposited for dispatch after applicant's planes had passed the majority of the intermediate points. On the basis of the foregoing and all the facts of record, we find that the services proposed by Southern Aviation are not required by the public convenience and necessity.

All American Aviation, Inc.—All American is certificated to engage in air transportation with respect to mail and property in scheduled operation over route No. 49. It is not authorized to carry passengers. Route No. 49 is composed of five segments radiating from Pittsburgh, Pa., to the terminals Jamestown, N. Y., Williamsport and Philadelphia, Pa., and two to Huntington, W. Va.

Applicant's operations utilize a device which permits the pick-up and delivery of mail and express without landing. Under the terms of its certificates, each flight is required to serve all intermediate points between terminals. The rate of compensation now received by applicant for the transportation of mail is 50.26 cents per airplane mile applied to certain mileages flown per month and 27 cents per airplane mile for mileage in excess of such mileages. The combined rate averages about 42 cents per airplane mile.

All American has applied for authority to serve 441 communities on 23 routes totaling approximately 7,440 route miles in the general area under consideration. These communities encompass the territory bounded roughly by Memphis and Evansville on the west, Cincinnati and Washington on the north, Norfolk and Charleston on the east, and Birmingham and Atlanta on the south. All American proposes an exclusive mail and property pick-up and delivery operation. It contends that there is a strong present need for mail and express service in this area but that the area fails to show the existence of any considerable potential passenger traffic except at points already certificated for passenger service or at points which appear to be logical additions to existing services. However, its position is that it stands ready to furnish a combination passenger and pick-up service in this area if a need for passenger service on any of its proposed routes should be established.

Applicant is now certificated for 1,563 route miles. It proposes to tie in its proposed operations with points on its present system, using Pittsburgh as its main maintenance and overhaul base. Applicant contends that the expanded mileage will substantially reduce average per-mile costs. Applicant bases its case principally on the extent of improvement in postal service it proposes to provide for the communities to be served. It points to the unique fitness of its pick-up and delivery system to improve the postal service. To this end, applicant submitted a study purporting to show the advantages in the receipt and dispatch of mail to and from intermediate stations on its proposed routes arriving at and moving from presently certificated airline cities and scheduled airline trips. Both incoming mail and outgoing mail for other airline flights connecting at terminals with All-American flights were traced to and from each intermediate point on applicant's proposed routes. Arrival and departure times of this mail for the intermediate points were recorded as transported by All-American flights and compared with present facilities. This study reveals instances where applicant's proposed service would afford same

day delivery of air mail which with existing facilities is not delivered until the following day. Likewise, the proposed service would allow later closing times at intermediate points for outgoing mail under present connecting schedules at the terminals. As set up, applicant's schedules afford good interroute connections and extensive integration with trunk-line schedules.

It is true that for the schedules shown applicant's proposed service would result in a considerable expedition of movement both for incoming mail from, and outgoing mail for, other air-line flights. But applicant's comparison of its proposed service with existing facilities does not show the probable volume of mail to be carried, nor does it show how the Post Office Department's use of star routes or mobile postal units might offer the advantages in expedition claimed for the proposed service. Applicant's proposed operation was planned without reference to probable prospects of expediting mail by the use of mobile postal units, although the Post Office Department plans to extend their use.

The authorization of All-American's proposed service in the southeastern area would more than quadruple the size of its present pick-up and delivery operations. No evidence was presented to indicate the extent that mail service in this area could be expedited through star routes and mobile postal units. Most of the applicant's proposed points of service are but short distances apart. For short-haul mail traffic, however, motor transportation generally is both more practical and more economical than transportation by aircraft. Indeed, applicant concedes that the star route service has been its principal competitor for mail traffic.

Data submitted by applicant on the economic potential of its proposed routes show that they do not have nearly the average traffic-producing resources found in the region of route No. 49. On the basis of per-route-mile comparisons in population, income tax returns, and per capita post office receipts and retail sales the record reveals that route No. 49 has more than four times the average per-route-mile economic strength of the proposed routes. Hence, it can be reasonably concluded that the proposed routes will not generate the same volume of air mail experienced on route No. 49.

Applicant estimates a required mail pay of $2,937,169 to meet its break-even need and to return 8 percent on its proposed capital investment. Its nonmail revenues are estimated at but $82,725. However, if the cost of the proposed extension should approximate applicant's present expenses on route No. 49, its required mail pay will exceed $4,000,000. It is recognized, however, that both the amount of traffic a proposed service will produce and its probable cost cannot be forecast with any great measure of reliability. But such forecasts must necessarily be used as aids in determining the probable effect of the proposed service on the public convenience, and the likely cost to the Government.

Even if it be conceded that applicant's proposal would increase the public convenience with respect to the postal service, it is apparent that the question of postal advantages alone cannot resolve the broader question of the relative public need of the extended pick-up and delivery system sought herein. Conditions of terrain and existing transportation facilities in States encompassed by applicant's proposal

make imperative new and additional air passenger service. It appears of record that such service, along with improved mail and express accommodations, can best be provided by operations certificated for the transportation of persons, mail, and property. Improvements in mail service for the regions in this area that most need it can best be effected by carriers carrying passengers as well as mail and property. Not only its limited utility but its prospective cost to the Government place applicant's proposed service beyond the broad needs and best interests of the public. The large estimated annual cost to the Government in mail pay of providing the proposed improvement cannot be justified. In view of the foregoing, we find that the public convenience and necessity do not require the authorization of All American's proposed service in this area.

Upon the basis of the foregoing findings and conclusions and all the facts of record, we find that the public convenience and necessity require—

1. That a temporary certificate of public convenience and necessity be issued to Piedmont Aviation, Inc., after the further appropriate showing indicated in this opinion as to the adequacy of airport facilities, authorizing air transportation of persons, property, and mail, for a period of 3 years from the date of issuance (a) between the alternate terminal points Louisville, Ky., and Cincinnati, Ohio, the intermediate points Lexington, Ky., Bristol, Va., and beyond Bristol, (1) the intermediate points Asheville, Charlotte, Southern Pines-Pinehurst-Aberdeen, and Fayetteville, N. C., and the terminal point Wilmington, N. C., and (2) beyond Bristol, the intermediate points Winston-Salem, Greensboro-High Point, Raleigh-Durham, and Goldsboro, N. C., and the terminal point New Bern, N. C., and a seasonal operation between New Bern and Morehead City, N. C., between May 1 and October 31 of each year; (a) between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky., Huntington, W. Va., Charleston, Beckley, and Princeton-Bluefield, W. Va., Roanoke, Lynchburg, Charlottesville, and Richmond, Va., and the terminal point Norfolk, Va.; (b) between the terminal point Roanoke, the intermediate points Danville, Va., and Greensboro-High Point, Raleigh-Durham, and Fayetteville, N. C., and the terminal point Wilmington, N. C.

2. That a temporary certificate of public convenience and necessity be issued to Southern Railways, Inc., after the further showing indicated in this opinion as to the adequacy of airport facilities, authorizing air transportation of persons, property, and mail, for a period of 3 years from the date of issuance, (a) between the terminal point Memphis, Tenn., the intermediate points Tupelo and Columbus, Miss., Tuscaloosa, Birmingham, and Gadsden, Ala., Atlanta and Athens, Ga., and Greenwood, Greenville, Spartanburg, and Rock Hill, S. C., and the terminal point Charlotte, N. C.; (b) between the terminal point Atlanta, Ga., the intermediate points La Grange, Columbus, Albany, Moultrie, and Valdosta, Ga., and the terminal point Jacksonville, Fla.; and (c) between the terminal point Columbus, Ga., the intermediate points Macon and Augusta, Ga., Orangeburg, S. C., and the terminal point Charleston, S. C.

3. That the certificate of American Airlines, Inc., for route No. 4 be amended to include Richmond, Va., as an intermediate point between Washington, D. C., and Lynchburg, Va.

4. That the certificate of Delta Air Lines, Inc., for route No. 21 be amended to include Selma and Montgomery, Ala., and Columbus, Ga., as intermediate points alternate to Birmingham, Ala., between Meridian, Miss., and Atlanta, Ga., and to include Macon, Ga., as an intermediate point, alternate to Augusta, between Atlanta and Savannah, Ga., and that the certificate for route No. 54 be amended to include Chattanooga, Tenn., as an intermediate point alternate to Knoxville, Tenn., between Lexington, Ky., and Atlanta, Ga.

5. That the certificate of Eastern Air Lines, Inc.; for route No. 5 be amended to include Pensacola, Fla., as an intermediate point between Montgomery and Mobile, Ala., to include Anderson, S. C., as an intermediate point between Greenville, S. C., and Atlanta, Ga., and to include Danville, Va., as an intermediate point between Richmond, Va., and Winston-Salem and/or Greensboro-High Point, N. C., and that route No. 5 be extended from the intermediate point Greenville, S. C., to the terminal point Chattanooga, Tenn.; that the certificate for route No. 6 be amended to include Florence, S. C., as an intermediate point between Raleigh-Durham, N. C., and Charleston, S. C.; that the certificate for route No. 10 be amended to include Waycross, Ga., as an intermediate point between Macon, Ga., and Jacksonville, Fla., to include Rome, Ga., as an intermediate point between Chattanooga, Tenn., and Atlanta, Ga., and to include Huntsville, Ala., as an intermediate point alternate to Florence-Sheffield-Tuscumbia, Ala., between Nashville, Tenn., and Birmingham, Ala.; and that the certificate for route No. 47 be amended to include Owensboro, Ky., as an intermediate point between Evansville, Ind., and Louisville, Ky., and to include Ashland, Ky.-Huntington, W. Va., as an intermediate point between Lexington-Frankfort, Ky., and Charleston, W. Va.

6. That the certificate of Pennsylvania-Central Airlines Corporation for route No. 51 be amended to extend said route from the intermediate point Rocky Mount, N. C., to the terminal point Washington, D. C., via the intermediate point Richmond, Va.; that Winston-Salem and Hickory, N. C., be included as intermediate points between Greensboro-High Point,[16] and Asheville, N. C.; and that said route be extended from Knoxville, Tenn., to the terminal point Memphis, Tenn., via the intermediate points Chattanooga, Tenn., and Huntsville, Ala.

7. That the certificate of Transcontinental & Western Air, Inc., for route No. 58 be amended to include Louisville, Ky., as an intermediate point between St. Louis, Mo., and Cincinnati, Ohio.

8. That the joint applications of Frank W. Hulse and Southern Airways, Inc., in Docket No. 1898, for approval of the acquisitions of control arising from his control of Southern Airways, Inc., and other affiliated corporations, and for approval of the interlocking relationships existing by reason of the said Frank W. Hulse holding certain designated positions in Southern Airways, Inc., and other affiliated corporations, as set forth in said applications, be and they are approved, subject to the conditions (a) that unless the prior approval

[16] For reasons stated in Order Serial Number E 433 the intermediate point Raleigh has been redesignated Raleigh Durham, and the intermediate point Greensboro has been redesignated Greensboro-High Point.

of the Board shall have been obtained, commercial transactions between Southern Airways, Inc., and said affiliated corporations, or between Southern Airways, Inc., and said Frank W. Hulse, shall be limited to those in which the price of any unit of property involved does not exceed $200, and the total annual expenditures involved in such commercial transactions by any of the parties shall not exceed $10,000 collectively, (b) that a statement of all transactions between the parties shall be submitted by Southern Airways, Inc., with its annual report each year, and (c) that the approval of the interlocking relationships granted herein shall continue unless revoked by the Board pursuant to section 248.1 of the Economic Regulations only so long as the said Frank W. Hulse continues in uninterrupted tenure thereof;

9. That the applications of Pennsylvania-Central Airlines Corporation to extend route No. 55 from Birmingham to Mobile, Ala., of Transcontinental & Western Air, Inc., to include Hagerstown and Cumberland, Md., as intermediate points on route No. 61, and of Southern Bus Lines be deferred.

10. That the establishment of local service to cities in Mississippi, Louisiana, Alabama, and Georgia (other than that expressly provided for herein) be deferred for further consideration with the *Mississippi Valley Case*.

11. That the temporary authority of Eastern Air Lines, Inc., to serve Huntsville, Ala., as an intermediate point on route No. 16 between Florence-Sheffield-Tuscumbia and Birmingham, Ala., be terminated 30 days from the effective date of the order entered in this case.

12. That the applications be denied in all other respects.

We find also that Piedmont Aviation, Inc., Southern Airways, Inc., American Airlines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Pennsylvania-Central Airlines Corporation, and Transcontinental & Western Air, Inc., are fit, willing, and able to perform properly the air transportation herein found required, and to comply with the rules regulations, and requirements of the Board.

An appropriate order will be entered.

Landis, Chairman, Branch and Lee, Members of the Board, concurred in the above opinion. Young, Member, concurred and dissented in part in a separate statement. Ryan, Vice Chairman, did not take part in the decision.

YOUNG, *Member*, concurring and dissenting:

I find it necessary to dissent from the conclusions of the majority with respect to two major aspects of this proceeding. They are the establishment of two local service systems in the area involved, and the extension of PCA's route No. 51 from Rocky Mount, N. C., to Washington and from Knoxville to Memphis, Tenn.

As to the former—the two local service systems—in my opinion they are neither necessary nor desirable in the further development of the "feeder line" experimental program. On the contrary they displace a favorable opportunity to inaugurate a test of an exceedingly important phase of such program, and at the same time, in this particular proceeding at least, to provide a more effective and satis-

factory service to most of the newly certificated communities than has been accomplished by the decision herein.

In connection with the foregoing I refer to a separate opinion which I included with the decision in the *Texas-Oklahoma Case*.[1] It outlined in some detail my concept of the proper development of the "feeder line" program and enumerated a series of questions which were inherently involved, and to which fairly definitive answers were necessary before the Board would be justified in launching the establishment of a comprehensive secondary route system. One of those questions, a very fundamental one, had particularly to do with the type of carrier which could most efficiently and economically perform the character of service that experience might indicate to be needed or desirable—that is, whether by a number of small independent carriers exclusively serving local route systems of various sizes, or by certain of the existing trunk-line carriers, the latter being arranged for by the certification of additional communities on their respective routes.

Heretofore the Board has certificated a substantial number of independent carriers, and granted them routes ranging in size from the 476 miles of Orlando Airlines in Florida to the approximately 2,000 miles of Aviation Enterprises in Texas. Thus, substantial provision has been made for answers to several of the important questions about which there is a feeling of genuine concern. However, the Board has not yet called upon an existing trunk-line carrier to conduct a truly local type of service in the areas adjacent to its route system; even though it seems entirely probable that such a carrier could turn to great advantage both its existing organization and its know-how in air transportation. As previously stated, a favorable opportunity to inaugurate such an experiment was presented in this proceeding, of which, I strongly believe, the Board should have taken advantage. Instead, however, it chose to certificate two additional independent local carriers which are similar in character to several other such carriers already certificated, a circumstance which tends to move beyond the limits of genuine experimentation and in the direction of establishing a system of local services on a national basis without waiting for an admittedly experimental program to be proved.

The service to be provided by the two local systems established in this proceeding could easily have been performed by existing trunk-line carriers, and to greater advantage to most of the communities involved. For example, Piedmont Airlines has been designated to serve the northern portion of the area. It was granted approximately 1,625 route miles, serving a total of 25 terminal and intermediate points. Of these points 17, including over 90 percent of the population, already have trunk-line service, leaving but 8 points with less than 10 percent of the population to be served by air for the first time.

Other than providing transportation to nearby trade centers for the 8 newly certificated communities, the principal purpose to be served by the establishment of the Piedmont system seems to be the carriage of through traffic between Norfolk, Richmond, and Cincinnati, and

[1] 7 C. A. B. 481 (1946).

between the Piedmont region in North Carolina and Louisville. As to this phase of it the record does not seem convincing that an unsatisfied public demand exists which would justify the substantial amount of new route mileage involved, especially in the light of other route authorizations in the same area in this proceeding. For example, the extension of Eastern from Greenville to Chattanooga will provide one-carrier service from important Piedmont cities to Louisville, and in direct competition with that portion of the newly established local route; connecting service between Delta and PCA at Knoxville and between Delta and Eastern at Chattanooga are available over fairly direct routings from Cincinnati to the whole of the Piedmont region; the inclusion of Richmond on American's route No. 4 between Lynchburg and Washington provides Richmond with one-carrier service to the West, and to Cincinnati via Washington; and Norfolk has a connecting service at Washington via PCA and American to Cincinnati, as well as to all other points served by American, or by other carriers serving Washington. And there is no assurance that Norfolk-Cincinnati traffic will not chooose the Washington connection rather than the local service with its nine intermediate stops. If additional service to the West is needed by Norfolk it could easily and economically have been provided by extending Eastern from Roanoke to Norfolk, involving only slightly more than 200 miles.

With respect to the local service to be provided by the Piedmont system, almost without exception the local communities could have been served by existing carriers, in a direction of primary traffic flow, with the addition of relatively few route miles. In most cases the planes of such carriers are in close proximity to the communities in their present lines of flight.

The same is true so far as Southern's local route system is concerned. Southern was granted about 1,500 route miles, including 23 terminal and intermediate points, of which 10, representing a little over 10 percent of the aggregate population of the route, will receive air transportation for the first time. All of them could be served by existing carriers without the addition of substantial mileage, and in the same general directions as Southern's routes, which are largely superimposed upon present trunk-line routes.

So far as the "feeder line" portion of this proceeding is concerned the conclusion of the majority has resulted in the creation of over 3,000 new route miles, nominally as a part of a further experiment in the possible lay-out of a local or secondary route system. For that purpose it is not needed since, as previously stated, the Board has already established local routes elsewhere similar in size and character. And particularly does it appear to be unneeded as a duplicating experiment when consideration is given to the probable cost involved. Assuming minimum schedules of two round trips over the routes daily, with a 90-percent completion factor, the two carriers will accumulate approximately 4,000,000 revenue plane miles per year. From operating results of other "feeder line" carriers to date it seems conclusive that mail pay requirements will not be less than 35 cents per plane mile (probably more), so it appears that the Government will be called upon for something like $1,500,000 annually to maintain the two route systems. How much of that amount may be returned to the Government in the sale of air mail postage is, of course, indeterminate at this time. How-

ever, since it is the long established practice of the Post Office Department to expedite the mail by moving it at night whenever practicable (by both surface and air carriers), and since the "feeder" route carriers will operate largely during the day, the additional air mail postage revenue resulting from the new local services probably will not be substantial, especially in the light of existing trunk-line services in the area.

I cannot help but contrast the foregoing estimate with the apparent saving which would have resulted had existing carriers been certificated to perform the service.

It is true, of course, that a few communities have been placed on trunk lines by the decision, but not with a view to furthering the experimental program. Rather, it evidently was because, geographically, they did not suitably identify themselves with one or the other of the new local route systems. Had the former been the objective a more comprehensive approach surely would have been made, since practically all of the heretofore uncertificated cities of 10,000 or more population in the area involved in the proceeding could have been certificated on trunk-line routes with a relatively small amount of new route mileage.

The point has often been made that trunk-line carriers do not provide adequate service to the local points on their routes; that such schedules as are routed to the intermediate points are not adapted to the local needs as to timing, but rather are dominated by the long-haul characteristics of the routes. Reference to the published time tables of such carriers appears to bear this out in a number of instances. However, I believe it is because there are an insufficient number of intermediate points along the trunk-line routes to justify economically local schedules directly designed to provide local services at suitable times and with reasonable frequency; that the situation is such as practically to require the carriers to serve many of them in incidental fashion, and upon some sort of skip-stop arrangement.

In my opinion, if there were a sufficient number of additional communities certificated on the route, or suitable portions thereof, of a given trunk-line carrier to warrant the establishment of purely local schedules, including, perhaps, a definition of "adequate" service similar to that which has been devised by the Board in the "feeder line" decisions to date, not only would most of the presently certificated communities on the route be given improved service and the added communities realize a repeatedly expressed desire to receive trunk-line service, but both would benefit from the facility with which connections, reservations, through-ticketing, et cetera, could be accomplished by the one-carrier arrangement.

I realize, of course, that the question of the certification of trunk lines versus independent carriers for local or "feeder line" services is one which has received much attention and discussion, and that it yet remains controversial in some respects. Further, I am aware that all portions of the existing trunk-line routes may not lend themselves to local type service of the character to which I have referred; also, that trunk lines do not extend into all areas of the country where air transportation service may be needed or desired. However, the fact remains that the existing trunk-line carriers are going concerns, they have maintenance shops, station equipment and facilities, flight equip-

ment, communicating systems, pilot training programs, ticket offices, sales, service, and publicity departments and agencies, and the various other service units essential to, and comprising a substantial part of, the fixed costs of any well-organized certificated air carrier. Consequently, the additional capital requirement would be relatively small, the cost of the local-service would be largely related to the direct flight operations, and the mail rate would be that which the carrier is receiving for its over all domestic trunk-line system. All of these are factors which cannot be overlooked in arriving at conclusions with respect to a local service system, and the economy and efficiency which they portend in the conduct of needed local services deserve to be given a proper place in the program which the Board has launched.

The question referred to in the preceding paragraph—that is, the certification of trunk lines versus independent carriers—involves not only a question of public policy but of basic economic principle and sound business practice, and the answer to it may well affect the whole of the air-transport industry.

Generally speaking, civil air transport has largely been developed through the application of subsidies paid out of public funds. The cost has been justified on the basis of the contribution of air transport in general to the public interest as measured by the service thus made available for the development of commerce, the postal service, and the national defense. The wisdom of this policy over the years to date has been abundantly established, and its continuation within reasonable limits for a further period is not controverted. Rather, it seems amply justified because there clearly is a need to develop further this new form of transportation with its enormous economic potential measured only in terms of traveltime saved to the public, to say nothing of its other important aspects. However, it does not follow that a route certification policy which may result in prolonging unnecessarily, or perhaps even permanently, the necessity for continued public support, and in increasing proportions, will be at all acceptable. Consequently, it would seem necessary, in the public interest, to chart a course that will progressively diminish dependence upon Government aid, and ultimately lead to substantial, if not complete, self-sufficiency. Otherwise, and especially if the tendency is a continuing increase in the demands upon the public treasury, the whole policy of Federal aid might well be placed in jeopardy, so far as the civil air transport industry is concerned. Therefore it is of very real importance to the sound economic development of the industry as a whole that the local "feeder" service program be so handled as to avoid to the fullest possible extent the need for special subsidy requirements.

Inherently, local services of the character already certificated, or before the Board for disposition, are relatively high in cost and low in value, when compared to the through trunk-line services. The cost is high because of the short haul, low traffic density, and low frequency. The value is low, in point of time saved, because of the direct competition of surface transportation, including privately owned cars, over the short distances. On the other hand, it is evident that the long-haul, high-speed services of the trunk-line carriers, when measured in terms of traveltime saved, are relatively low cost and high value compared to surface transportation. Thus, in scheduled air transportation we have the two extremes—that is, the higher

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cost-lower value services related to the "feeder" routes, and the lower cost-higher value services on the trunk-line routes—and I have difficulty understanding how the industry as a whole can make progress in the direction of economic self-sufficiency, or in diminishing the need for Government aid, by a policy of route certification which segregates those two extremes by both routes and operating entities.

The situation is not unlike that which exists in the electrical utility industry where the cost of serving consumers far removed from the generating plants is high as compared to those closer in. In that industry the regulatory agencies have not assumed that the public interest would be served by licensing one power company to serve consumers at distant points and another to serve those nearby, thus segregating the high- and low-cost services. Rather, a policy of rate-making has been developed which has balanced out the high- and low-cost factors, so far as the consumers are concerned, which results generally in similar rates for both categories of consumers. In effect, the user of the lower-cost service absorbs a portion of the expense of the higher-cost service. Nevertheless, the combined volume of the operation gives rise to economies and procedures which make possible the production of electric power at lower unit costs than could be attained by setting up separate power companies to provide separately the high- and low-cost services.

The difference in the air transport industry is that the costs are reversed in relation to distance—that is, the short-hop local services are higher in operating costs than the extended-flight, long-distance services—and in general the higher cost will result in higher Government subsidy rather than higher rates to the individual user. However, the analogy remains intact and appears to mean that the operating entities within the industry should be so constituted as to provide, to the fullest extent practicable, a balanced volume combination of the low-cost high-value services on the one hand and the high-cost low-value services on the other. In my opinion such an arrangement would not only provide at less cost a major part of such local services as circumstances may warrant, but it would also develop a true "feeder" type of service with resultant benefits both to the local communities served and to the carrier.

I do not mean to imply that no independent carrier can develop an economically sound "feeder" and local service route, nor that trunk-line carriers can provide all the local services which may prove to be necessary or desirable. However, I do mean that the seemingly basic principle outlined above should be realistically appraised by the Board in reaching final conclusions with respect to the ultimate development of a secondary route system.

I must also disagree with the action of the majority which authorizes unrestricted shuttle-type service between intermediate points on the local routes provided for herein, irrespective of whether such points are already served by presently certificated air carriers. My reasons for disagreement have previously been set out in a dissenting opinion in the *Pioneer* case,[1] and need not be repeated here.

So much for the local service systems involved in this proceeding.

[1] *Pioneer, L., Amendment*, 7 C. A. B. 469 (1946).

Now with respect to the extension of PCA's route No. 51 from Rocky Mount to Washington and from Knoxville to Memphis via Chattanooga: It provides (1) an additional Memphis-Washington route; (2) an additional Memphis-New York route; (3) it establishes duplicate services of doubtful value from the public interest point of view; (4) it does not provide the principal service between Memphis and the Piedmont cities which the record seems amply to support; and (5) it involves implications as to routes and services directly identified with another proceeding now pending and soon to be before the Board for decision.

To further develop the foregoing, PCA has acquired, subject only to compliance with the pertinent Board regulations, a nonstop service from Memphis to Washington; a nonstop service from Chattanooga to Washington; a one-stop service via Chattanooga or Knoxville from Memphis to New York; a one-stop service via Chattanooga from Birmingham to Washington; and has gained a competitive position with respect to certain local points between Chattanooga and Washington.

Practically all of the added services just referred to are directly competitive with existing carriers, and in my opinion the record does not demonstrate the need for duplicate services in any such proportion as the decision has provided. They are too far reaching in character and I do not believe the result will be sufficiently constructive to justify it.

With respect to service between Memphis and the Piedmont area, the extension of PCA's route No. 51 from Knoxville to Memphis via Chattanooga meets a relatively small part of the need. The more important requirement, according to the record, was direct service between Memphis and Charlotte, the largest city in the area, Greenville and Spartanburg, all of which are on Eastern's route No. 5. PCA can serve these cities to Memphis only by means of a connection with Eastern at Chattanooga. Had Eastern been extended to Memphis, instead of only to Chattanooga, it could have directly served not only the cities just named, but Raleigh, Richmond, Greensboro, High Point, and Winston-Salem as well. Also, since the majority did extend Eastern from Greenville to Chattanooga, Memphis could have been included by the addition of approximately 75 route miles, as compared with the 270 new route miles granted PCA between Chattanooga and Memphis. Furthermore, a substantial portion of the duplicate services to which I have referred would have been avoided.

A final point which I wish to make concerns the possible effect of the decision in this proceeding upon the pending *Boston-New York-New Orleans* case, Docket No. 730 et al., in which 10 applicants, 1 of which is PCA, seek to conduct trunk-line services between Boston, New York, or Washington and New Orleans, via various intermediate points. An extended and comprehensive hearing has been concluded, a voluminous record made up, the trial examiner's report and recommendation has been prepared, and briefs to the Board and oral argument only are awaited before a decision by the Board will be in order.

The primary objective of the pending proceeding is the establishment of a new route from the northerly portion of the Atlantic seaboard to New Orleans, and necessarily it is related to some of the

considerations involved in the instant proceeding since such a route, if authorized, would pass through the same general area and directly include a number of the important cities in the area.

Whether or not an additional route from Boston, New York, or Washington to New Orleans is in the public interest remains to be determined. It depends entirely upon the showing made in the record especially developed in the premises. Meanwhile, however, and without the benefit of that record, the majority has authorized the extension of PCA's route No. 51 in such fashion as to leave open only the gap between Birmingham and New Orleans to complete a route from Washington to New Orleans, as well as from New York to New Orleans. In my opinion such authorization raises a question as to the extent to which the pending record will prove to be determinative with respect to the basic question it was directly designed to place in issue before the Board. And in that connection it is to be noted that PCA's application in the instant proceeding included linking up Birmingham and Mobile as a step in the direction of reaching New Orleans. It was recommended by the examiner, but deferred by the Board for later consideration.

Furthermore, it is noteworthy that a new route from Boston, New York, or Washington to the Gulf would be directly competitive with Eastern's route No. 5, and, since one of the important segments of that route has been preempted in favor of PCA by the majority decision herein, it would seem that to establish the need for yet further competition increases the burden of proof requirement in substantial measure.

All circumstances considered, I should think the least which can be concluded is that the over-all status of the applicants in the *Boston-New Orleans* case has been thrown somewhat out of balance.

In all other respects I concur with the majority opinion in this proceeding.

Order

A full public hearing having been held in the above-entitled proceeding, and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof,

It is Ordered, 1. That amended certificates of public convenience and necessity, in the forms attached hereto, shall be issued to American Airlines, Inc., for route No. 4; to Delta Air Lines, Inc., for routes Nos. 24 and 54; to Eastern Air Lines, Inc., for routes Nos. 5, 6, 19, and 47; to Pennsylvania-Central Airlines Corporation for route No. 51; and to Trans-continental & Western Air, Inc., for route No. 58;

2. That said amended certificates shall be signed on behalf of the Board by its Chairman, shall have affixed thereto the seal of the Board attested by the Secretary, and shall be effective on the 4th day of April 1947;

3. That the application of Pennsylvania-Central Airlines Corporation to extend route No. 55 from Birmingham, Ala., to Mobile, Ala., be and it is deferred for consideration when the *Boston-New York-Atlanta-New Orleans* case, Docket No. 730 et al., is submitted for decision;

4. That the application of Transcontinental & Western Air, Inc., to include Hagerstown and Cumberland, Md., as intermediate points on route No. 61 be and it is deferred for consideration when the *Middle Atlantic Area* case, Docket No. 674 et al., is submitted for decision;

5. That the application of Southern Bus Lines in Docket No. 1779 be and it is hereby deferred for consideration with the *Mississippi Valley* case, Docket No. 548 et al.;

6. That establishment of local service to cities in Mississippi, Louisiana, Alabama, and Georgia (other than that expressly provided for herein) be and it hereby is deferred for consideration with the *Mississippi Valley* case, Docket No. 548 et al.;

7. That the joint applications of Frank W. Hulse and Southern Airways, Inc., in Docket No. 1898, for approval of the acquisitions of control arising from his control of Southern Airways, Inc., and other affiliated corporations, and for approval of the interlocking relationships existing by reason of the said Frank W. Hulse holding certain designated positions in Southern Airways, Inc., and other affiliated corporations, as set forth in said applications, be and they hereby are approved, subject to the conditions (a) that unless the prior approval of the Board shall have been obtained, commercial transactions between Southern Airways, Inc., and said affiliated corporations, or between Southern Airways, Inc., and said Frank W. Hulse, shall be limited to those in which the price of any unit of property involved does not exceed $200, and the total annual expenditures involved in such commercial transactions by any of the parties shall not exceed $10,000 collectively, (b) that a statement of all transactions between the parties shall be submitted by Southern Airways, Inc., with its annual report each year, and (c) that the approval of the interlocking relationships granted herein shall continue unless revoked by the Board pursuant to section 248.1 of the Economic Regulations only so long as the said Frank W. Hulse continues in uninterrupted tenure thereof;

8. That the temporary certificate of public convenience and necessity, as amended, issued to Eastern Air Lines, Inc., on January 9, 1947, by Order Serial No. E-225, be and it is canceled, effective 30 days after the date of issuance of this order;

9. That a temporary certificate of public convenience and necessity be hereafter issued, after the appropriate showing indicated in the opinion attached hereto as to the adequacy of airport facilities, to Southern Airways, Inc., authorizing it to engage in air transportation with respect to persons, property, and mail for a period of 3 years from the date of issuance, as follows:

(a) Between the terminal point Memphis, Tenn., the intermediate points Tupelo and Columbus, Miss., Tuscaloosa, Birmingham, and Gadsden, Ala., Atlanta and Athens, Ga., Greenwood, Greenville, Spartanburg, and Rock Hill, S. C., and the terminal point, Charlotte, N. C.;

(b) Between the terminal point Atlanta, Ga., the intermediate points La Grange, Columbus, Albany, Moultrie, and Valdosta, Ga., and the terminal point Jacksonville, Fla.;

(c) Between the terminal point Columbus, Ga., the intermediate points Macon and Augusta, Ga., Orangeburg, S. C., and the terminal point Charleston, S. C.;

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10. That a temporary certificate of public convenience and necessity be hereafter issued, after the appropriate showing indicated in the opinion attached hereto as to the adequacy of airport facilities, to Piedmont Aviation, Inc., authorizing it to engage in air transportation with respect to persons, property, and mail for a period of 3 years from the date of issuance, as follows:

(a) Between the alternate terminal points Cincinnati, Ohio, and Louisville, Ky., the intermediate points Lexington, Ky., Bristol, Va., and (i) beyond Bristol, the intermediate points Asheville, Charlotte, Southern Pines-Pinehurst-Aberdeen, and Fayetteville, N. C., and the terminal point Wilmington, N. C. and (ii) beyond Bristol, the intermediate points Winston-Salem, Greensboro-High Point, Raleigh-Durham, and Goldsboro, N. C., and the terminal point New Bern, N. C., and (during the period from May 1 to October 31, inclusive, of each year) between the intermediate point New Bern and the terminal point Morehead City, N. C.;

(b) Between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky., Huntington, W. Va., Charleston, Beckley, and Princeton-Bluefield, W. Va., Roanoke, Lynchburg, Charlottesville, and Richmond, Va., and the terminal point Norfolk, Va.; and

(c) Between the terminal point Roanoke, Va., the intermediate points Danville, Va., Greensboro-High Point, Raleigh-Durham, and Fayetteville, N. C., and the terminal point Wilmington, N. C.; and

11. That the applications in this proceeding, except to the extent to which they are herein granted or deferred, be and they are hereby denied.

CERTIFICATES

AMERICAN AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

Between the terminal point Los Angeles, Calif., the intermediate points San Diego, Calif., Phoenix, Tucson, and Douglas, Ariz., El Paso, Tex., and (a) beyond El Paso, the intermediate points Oklahoma City and Tulsa, Okla., Nashville and Knoxville, Tenn., Bristol, Roanoke, Lynchburg, and Richmond, Va., Washington, D. C., Baltimore, Md., Philadelphia, Pa., Newark, N. J., New York, N. Y., Bridgeport, New Haven, and Hartford, Conn., Springfield, Mass., Providence, R. I., and the terminal point Boston, Mass., and (b) beyond El Paso, the intermediate points Midland-Odessa (to be served through Midland Army Air Field), Big Spring, Abilene, Fort Worth, and Dallas, Tex., Texarkana and Little Rock, Ark., Memphis, Nashville, and Knoxville, Tenn., Bristol, Roanoke, Lynchburg, and Richmond, Va., Washington, D. C., Baltimore, Md., Philadelphia, Pa., Newark, N. J., New York, N. Y., Bridgeport, New Haven, and Hartford, Conn., Springfield, Mass., Providence, R. I., and the terminal point Boston, Mass.

to be known as route No. 4.

The service herein authorized is subject to the following terms, conditions, and limitations:

1. The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be au-

thorized by the Board, and may begin or terminate, or begin and terminate, trips at points short of terminal points.

2. The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate, as amended, and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein, other than a point required to be served through an airport named herein, through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

3. Service shall be rendered to San Diego, Calif., only on flights originating or terminating at points east of El Paso, Tex.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 4th day of April 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 4th day of April 1947.

DELTA AIR LINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

1. Between the terminal point Fort Worth, Tex., the intermediate points Dallas and Tyler, Tex., Shreveport, Alexandria, and Baton Rouge, La., and the terminal point New Orleans, La.,
2. Between the terminal point Fort Worth, Tex., the intermediate points Dallas and Tyler, Tex., Shreveport and Monroe, La., Jackson and Meridian, Miss., and (a) beyond Meridian, the intermediate points Birmingham, Ala., and Atlanta, Ga., and (b) beyond Meridian, the intermediate points Selma and Montgomery, Ala., Columbus and Atlanta, Ga., and (i) beyond Atlanta, the intermediate points Augusta, Ga., Columbia, S. C., and the terminal point Charleston, S. C., and (ii) beyond Atlanta, the intermediate point Augusta and the terminal point Savannah, Ga., and (iii) beyond Atlanta, the intermediate point Macon, Ga., and the terminal point Savannah, Ga.,

to be known as route No. 24.

The service herein authorized is subject to the following terms, conditions, and limitations:

1. The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be au-

thorized by the Board, and may begin or terminate, or begin and terminate, trips at points short of terminal points.

2. The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate, as amended, and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 4th day of April 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 4th day of April 1947.

DELTA AIR LINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

1. Between the terminal point Chicago, Ill., the intermediate points Anderson Muncie-New Castle, Ind., Cincinnati, Ohio, Lexington, Ky., Knoxville, Tenn., Asheville, N. C., and Greenville-Spartanburg, S. C., and (a) beyond Greenville-Spartanburg, the intermediate point Columbia, S. C., and the terminal point Charleston, S. C., and (b) beyond Greenville-Spartanburg, the intermediate points Augusta, Savannah, and Brunswick, Ga., and Jacksonville, Fla., and the terminal point Miami, Fla.; and

2. Between the terminal point Chicago, Ill., the intermediate points Anderson Muncie-New Castle, Ind., Cincinnati, Ohio, Lexington, Ky., and (a) beyond Lexington, the intermediate points Knoxville, Tenn., Atlanta and Augusta, Ga., and (b) beyond Lexington, the intermediate points Chattanooga, Tenn., Atlanta and Augusta, Ga., and (i) beyond Augusta, the intermediate point Columbia, S. C., and the terminal point Charleston, S. C., and (ii) beyond Augusta, the intermediate points Savannah and Brunswick, Ga., and Jacksonville, Fla., and the terminal point Miami, Fla.,

to be known as route No. 54.

The service herein authorized is subject to the following terms, conditions, and limitations:

1. The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be

authorized by the Board, and may begin or terminate, or begin and terminate, trips at points short of terminal points.

2. The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate, as amended, and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 4th day of April 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 4th day of April 1947.

EASTERN AIR LINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

Between the terminal point Boston, Mass., the intermediate points Providence, R. I., Hartford and New Haven, Conn., New York, N. Y., Newark, N. J., Philadelphia, Pa., Atlantic City, N. J., Baltimore, Md., Washington, D. C., Richmond and Danville, Va., Raleigh-Durham, Winston-Salem, Greensboro-High Point, and Charlotte, N. C., Spartanburg and Greenville, S. C., and (a) beyond Greenville, the terminal point Chattanooga, Tenn., and (b) beyond Greenville, the intermediate points Anderson, S. C., Atlanta and Columbus, Ga., Birmingham and Montgomery, Ala., Pensacola, Fla., Mobile, Ala.; New Orleans, Baton Rouge, and Lake Charles, La., Beaumont-Port Arthur and Houston, Tex., and (i) beyond Houston, the intermediate point Corpus Christi, Tex., and the terminal point Brownsville, Tex., and (ii) beyond Houston, the terminal point San Antonio, Tex.,

to be known as route No. 5.

The service herein authorized is subject to the following terms, conditions, and limitations:

1. The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board, and may begin or terminate, or begin and terminate, trips at points short of terminal points.

2. The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve

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such point prior to the date of issuance of this certificate, as amended, and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

3. The holder shall not serve Birmingham, Ala., and Atlanta, Ga., by flights originating at Birmingham and terminating at Atlanta, or by flights originating at Atlanta and terminating at Birmingham;

4. The holder shall not serve Birmingham, Ala., by flights serving both New Orleans, La., and Chicago, Ill.;

5. The holder shall not serve Greensboro-High Point and Winston-Salem, N. C., on the same flight, or serve Raleigh-Durham and Greensboro-High Point, N. C., on the same flight, or serve Raleigh-Durham and Winston-Salem on the same flight, or serve Danville, Va., and Raleigh-Durham on the same flight;

6. The holder shall serve Boston, Mass., only on flights originating or terminating south of Richmond, Va., or west of Charleston, W. Va.;

7. The holder shall serve Providence, R. I., and Hartford and New Haven, Conn., only on flights originating at Boston, Mass., and terminating south of Richmond, Va., or west of Charleston, W. Va., or on flights originating south of Richmond or west of Charleston and terminating at Boston;

The exercise of the privileges granted by this certificate, as amended, shall be subject to such reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate as amended shall be effective on the 4th day of April 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 4th day of April 1947.

EASTERN AIR LINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

Between the terminal point Miami, Fla., the intermediate points West Palm Beach, Vero Beach, Orlando, Daytona Beach, and Jacksonville, Fla., Brunswick and Savannah, Ga., Charleston and Columbia, S. C., and (a) beyond Columbia, the intermediate points Florence, S. C., Raleigh-Durham, N. C., Richmond, Va., Washington, D. C., Baltimore, Md., Atlantic City, N. J., Philadelphia, Pa., Newark, N. J., New York, N. Y., New Haven and Hartford, Conn., Providence, R. I., and the terminal point Boston, Mass., and (b) beyond Columbia, the intermediate points Charlotte, Winston-

Salem, and Greensboro-High Point, N. C., Roanoke, Va., Charleston, W. Va., Akron and Cleveland, Ohio, and the terminal point Detroit, Mich.,

to be known as route No. 6.

The service herein authorized is subject to the following terms, conditions, and limitations:

1. The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board, and may begin or terminate, or begin and terminate, trips at points short of terminal points.

2. The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate, as amended, and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby;

3. The holder shall serve Boston, Mass., only on flights originating or terminating south of Richmond, Va., or west of Charleston, W. Va.;

4. The holder shall serve Providence, R. I., and Hartford and New Haven, Conn., only on flights originating at Boston, Mass., and terminating south of Richmond, Va., or west of Charleston, W. Va., or on flights originating south of Richmond or west of Charleston and terminating at Boston;

5. The holder shall not serve Columbia and Charleston, S. C., on the same flight, or serve Columbia and Florence, S. C., on the same flight;

6. The holder shall not serve Winston-Salem and Greensboro-High Point, N. C., on the same flight.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 4th day of April 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 4th day of April 1947.

EASTERN AIR LINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

1. Between the terminal point Miami, Fla., the intermediate points West Palm Beach, Vero Beach, Orlando, Daytona Beach, and Jacksonville,

Fla., Waycross, Macon, Atlanta, and Rome, Ga., Chattanooga and Nashville, Tenn., and (a) beyond Nashville, the intermediate point Evansville, Ind., and the terminal point St. Louis, Mo., and (b) beyond Nashville, the intermediate points Louisville, Ky., and Indianapolis, Ind., and the terminal point Chicago, Ill.;

2. Between the terminal point Miami, Fla., the intermediate points Tampa and Tallahassee, Fla., Albany, Atlanta, and Rome, Ga., Chattanooga and Nashville, Tenn., and (a) beyond Nashville, the intermediate point Evansville, Ind., and the terminal point St. Louis, Mo., and (b) beyond Nashville, the intermediate points Louisville, Ky., and Indianapolis, Ind., and the terminal point Chicago, Ill.;

3. Between the terminal point Miami, Fla., the intermediate points Tampa and Tallahassee, Fla., Dothan, Montgomery, Birmingham, and Florence-Sheffield-Tuscumbia, Ala., and the terminal point Memphis, Tenn.; and

4. Between the terminal point Miami, Fla., the intermediate points Tampa and Tallahassee, Fla., Dothan, Montgomery, and Birmingham, Ala., and (a) beyond Birmingham, the intermediate points Florence-Sheffield-Tuscumbia, Ala., and Nashville, Tenn., and (b) beyond Birmingham, the intermediate points Huntsville, Ala., and Nashville, Tenn., and (i) beyond Nashville, the intermediate point Evansville, Ind., and the terminal point St. Louis, Mo., and (ii) beyond Nashville, the intermediate points Louisville, Ky., and Indianapolis, Ind., and the terminal point Chicago, Ill.;

to be known as route No. 10.

The service herein authorized is subject to the following terms, conditions, and limitations:

1. The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board, and may begin or terminate, or begin and terminate, trips at points short of terminal points;

2. The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate, as amended, and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby;

3. Flights between Tampa and Miami, Fla., shall originate or terminate at Atlanta, Ga., or Birmingham, Ala., or points north of either thereof;

4. The holder shall serve either Atlanta, Ga., or both Nashville, Tenn., and Montgomery, Ala., on all flights serving both Chicago, Ill., and New Orleans, La.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 4th day of April 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of

the Board to be affixed hereto, attested by the Secretary of the Board, on the 4th day of April 1947.

EASTERN AIR LINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

Between the terminal point St. Louis, Mo., the intermediate points Evansville, Ind., Owensboro, Louisville, and Lexington-Frankfort, Ky., Ashland, Ky., Huntington, W. Va., and Charleston, W. Va., and the terminal point Washington, D. C.,

to be known as route No. 47.

The service herein authorized is subject to the following terms, conditions, and limitations:

1. The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board, and may begin or terminate, or begin and terminate, trips at points short of terminal points.

2. The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate, as amended, and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 4th day of April 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 4th day of April 1947.

PENNSYLVANIA-CENTRAL AIRLINES CORPORATION

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

Between the terminal point Memphis, Tenn., the intermediate points Huntsville, Ala., Chattanooga and Knoxville, Tenn., Asheville, Hickory, Winston-

Salem, Greensboro-High Point, Raleigh-Durham, and Rocky Mount, N. C., and (a) beyond Rocky Mount, the intermediate point Richmond, Va., and the terminal point Washington, D. C., and (b) beyond Rocky Mount, the intermediate point Elizabeth City, N. C., and the terminal point Norfolk, Va.,

to be known as route No. 51.

The service herein authorized is subject to the following terms, conditions, and limitations:

1. The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board, and may begin or terminate, or begin and terminate, trips at points short of terminal points.

2. The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate, as amended, and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 4th day of April 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 4th day of April 1947.

TRANSCONTINENTAL & WESTERN AIR, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

Between the terminal point St. Louis, Mo., the intermediate points Louisville, Ky., Cincinnati, Dayton, and Toledo, Ohio, and the terminal point Detroit, Mich.,

to be known as route No. 58.

The service herein authorized is subject to the following terms, conditions, and limitations:

1. The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board, and may begin or terminate, or begin and terminate, trips at points short of terminal points.

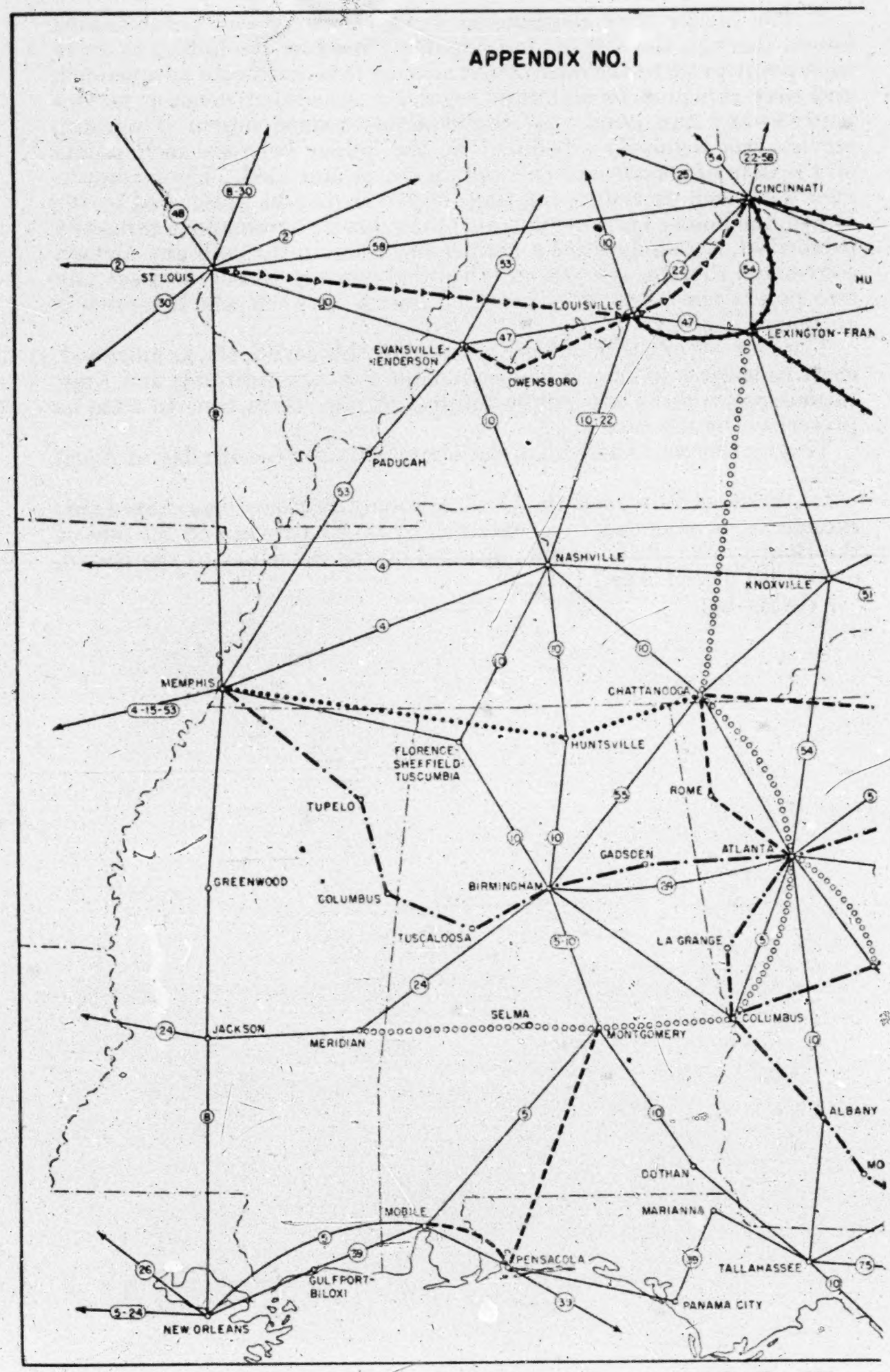
2. The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate as amended, and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

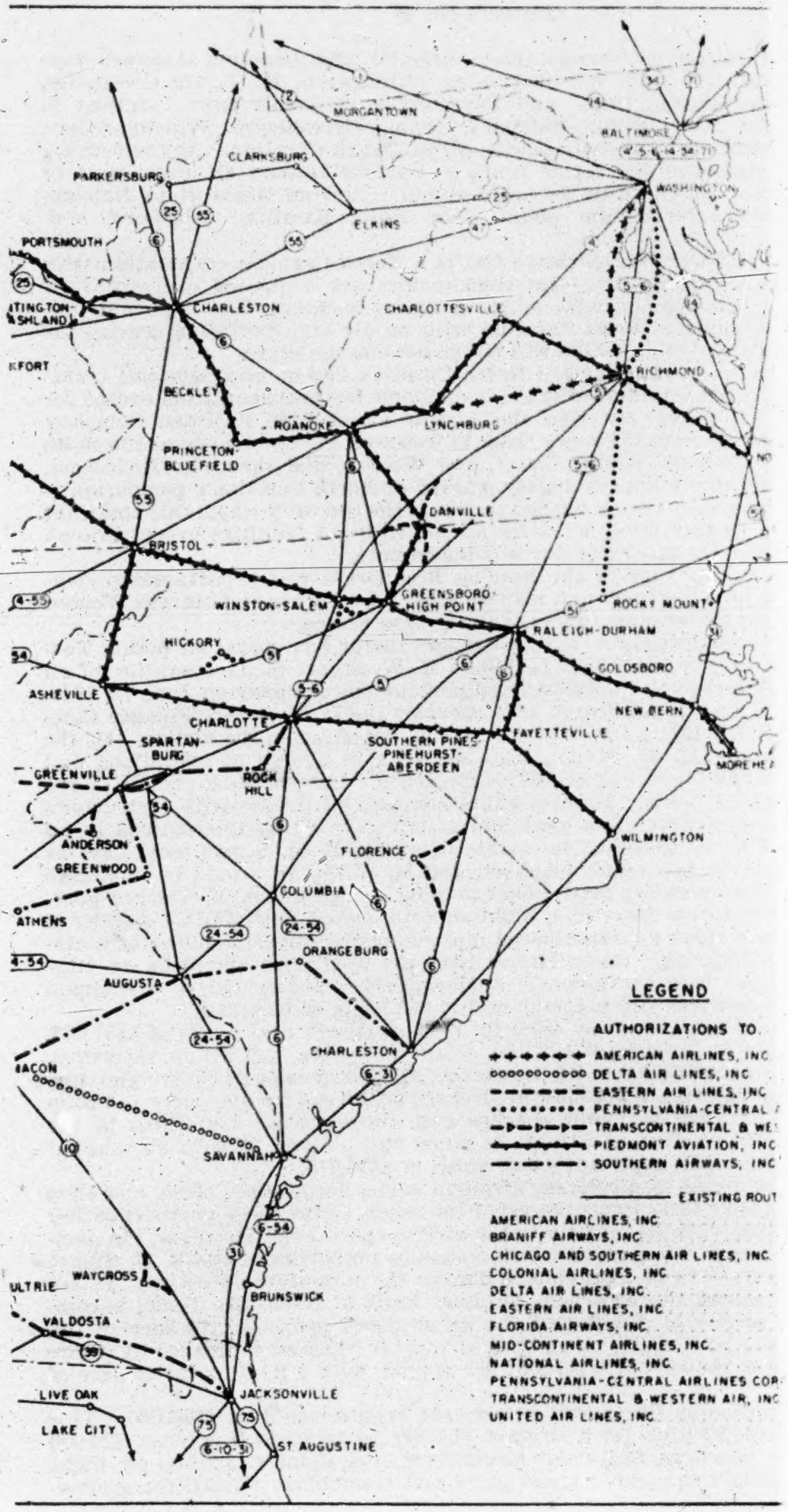
The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 4th day of April 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 4th day of April 1947.

APPENDIX NO. 1





LEGEND

AUTHORIZATIONS TO

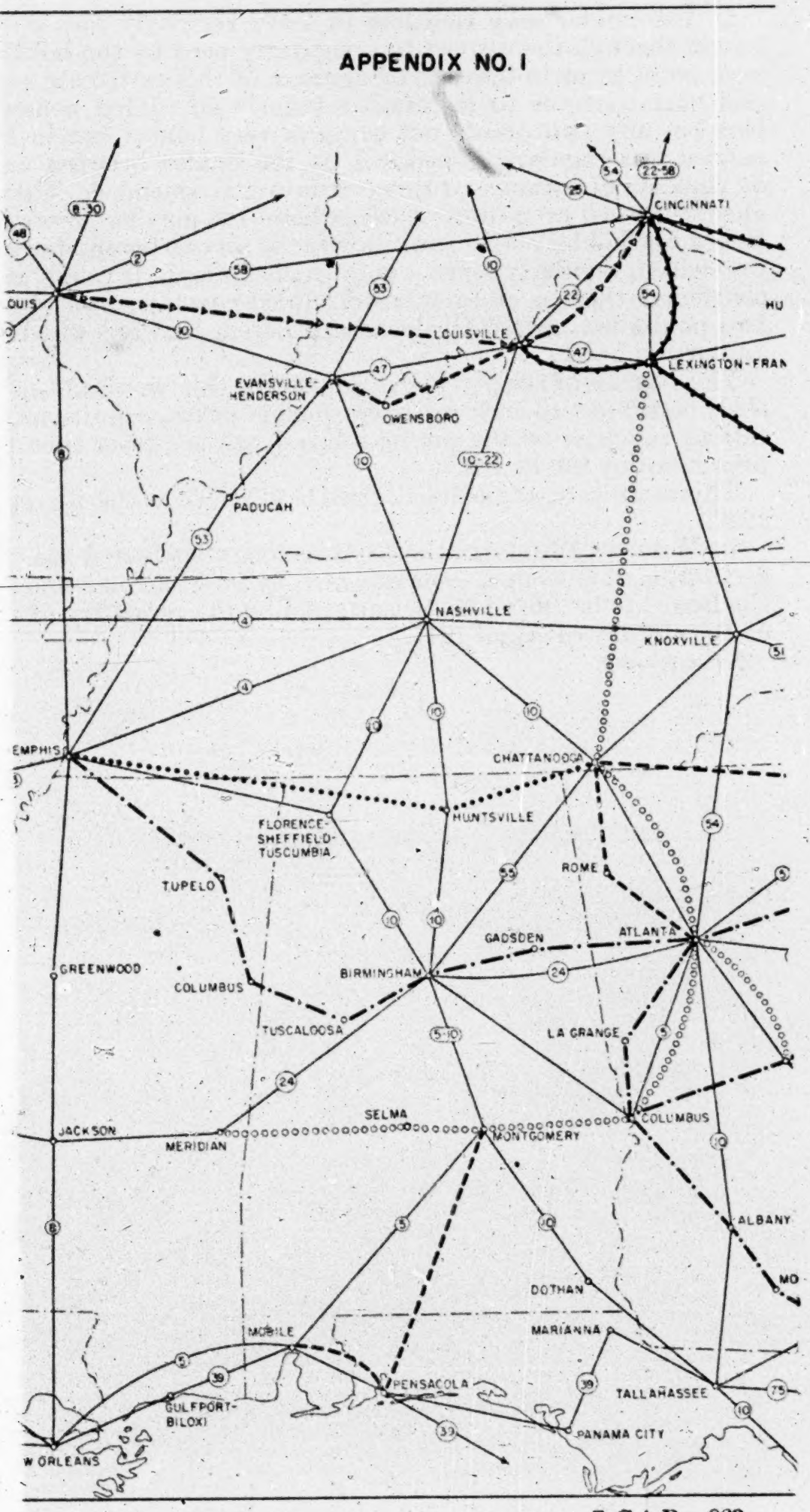
- AMERICAN AIRLINES, INC
- DELTA AIR LINES, INC
- EASTERN AIR LINES, INC
- PENNSYLVANIA-CENTRAL
- TRANSCONTINENTAL & WE
- PIEDMONT AVIATION, INC
- SOUTHERN AIRWAYS, INC

EXISTING ROUT

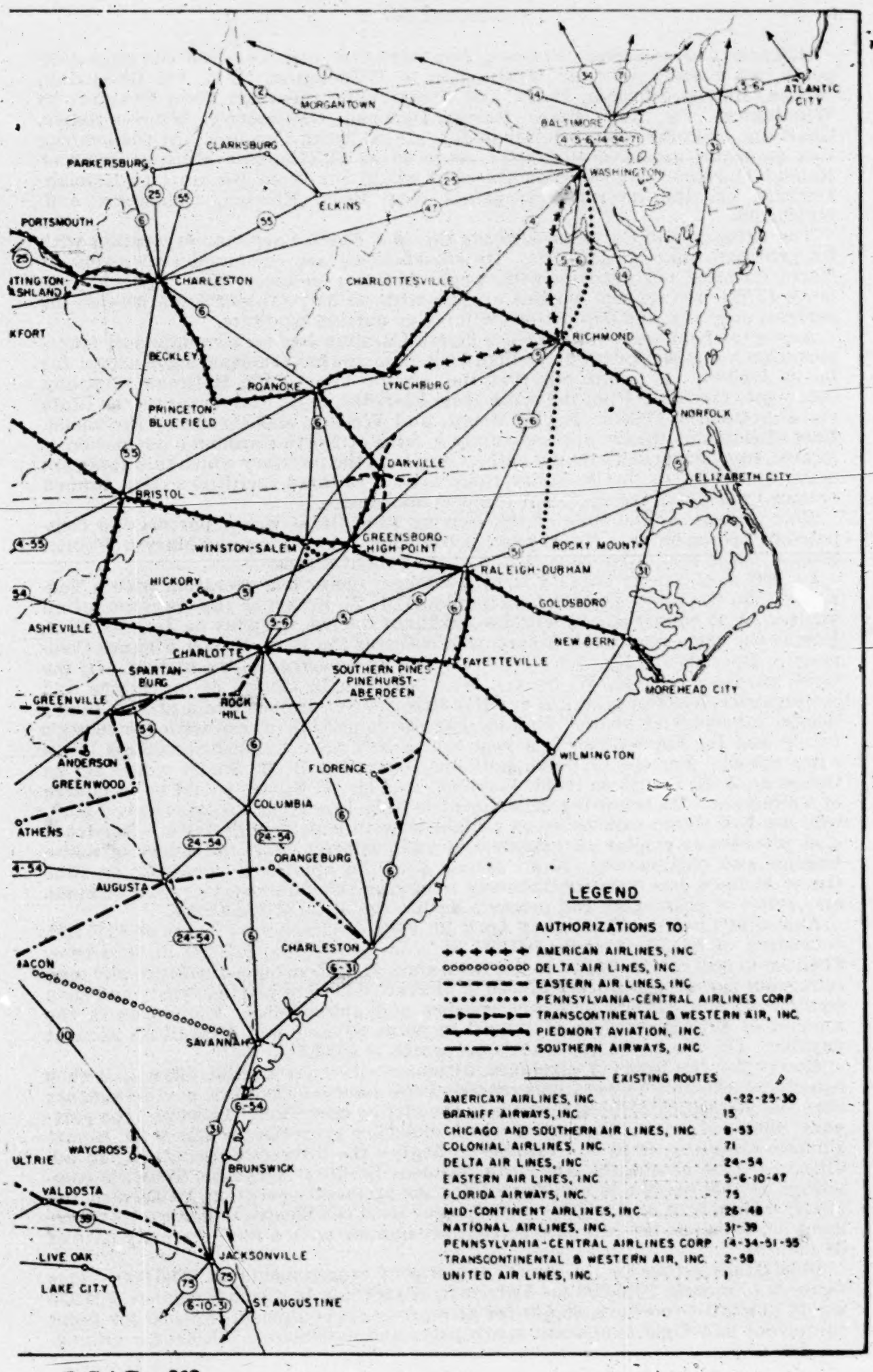
AMERICAN AIRLINES, INC.
BRANIFF AIRWAYS, INC.
CHICAGO AND SOUTHERN AIR LINES, INC.
COLONIAL AIRLINES, INC.
DELTA AIR LINES, INC.
EASTERN AIR LINES, INC.
FLORIDA AIRWAYS, INC.
MID-CONTINENT AIRLINES, INC.
NATIONAL AIRLINES, INC.
PENNSYLVANIA-CENTRAL AIRLINES COR
TRANSCONTINENTAL & WESTERN AIR, INC
UNITED AIR LINES, INC.

7 C.A.B.—863

APPENDIX NO. 1



7 C.A.B.—863



LEGEND

AUTHORIZATIONS TO:

- AMERICAN AIRLINES, INC
- DELTA AIR LINES, INC
- EASTERN AIR LINES, INC
- PENNSYLVANIA-CENTRAL AIRLINES CORP
- TRANSCONTINENTAL & WESTERN AIR, INC.
- PIEDMONT AVIATION, INC.
- SOUTHERN AIRWAYS, INC.

EXISTING ROUTES

AMERICAN AIRLINES, INC.	4-22-25-30
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APPENDIX No. 2

Atlantic and Carolina Airways, Inc.—Atlantic and Carolina Airways proposes two routes, one from Washington to Wilmington, N. C., via Greenville, Wilson, Raleigh-Durham, Dunn, and Fayetteville, the other from Beaufort to Wilmington, via New Bern, Raleigh-Durham, Greensboro, Winston-Salem, Charlotte, and other intermediate points, all in North Carolina. At the hearing this applicant amended the latter route so as to eliminate all stops west of Raleigh-Durham. Its route as amended would run from Beaufort to Raleigh-Durham via the intermediate points New Bern, Kinston, Goldsboro, and Smithfield.

The Atlantic and Carolina Airways Co., is a North Carolina corporation with its principal office at Raleigh. Its stockholders are composed exclusively of North Carolina businessmen with ample financial backing. The applicant proposes to provide eastern North Carolina with an air transportation service for persons, property, and mail, which will not go outside the State.

Applicant points out that eastern North Carolina has no adequate rail transportation but is dependent almost entirely on motor bus transportation except for heavy freight. It points out that the Alantic Coast Line Railroad Company comes into the State from the south from Florence, S. C., and traverses the State via Fayetteville, Wilson, Rocky Mount, and Weldon, and thence to Richmond. East of that line, where approximately a third of North Carolina's population is located, numbering more than a million people, is the territory which this applicant seeks to serve. In this territory there are no railroad facilities except branch or spur lines which the applicant terms is inadequate.

Blue Grass.—At the time of the hearing Blue Grass was a partnership composed of Bishop Marvin Stuart and his two sons, John Ewing and Marvin Wooten Stuart. Each is a native-born citizen of the United States.

In 1942 J. E. Stuart began small passenger motor bus operation within Tennessee. In the latter part of 1943 he joined M. W. Stuart in the operation of an airline. J. E. Stuart parted with ownership of the bus company on June 18, 1944. During the same year B. M. Stuart, who operates the B. M. Stuart Finance Company at Russellville, Ky., joined his two sons as a partner in the airline. Of the three partners only M. W. Stuart, who has been in charge of operations and maintenance, has had practical aviation experience. He has had a private pilot's license for about 11 years. He also has a commercial license with instructor's rating and for approximately a year and a half gave flying instructions in an army school. For the proposed interstate operation B. M. Stuart would act as treasurer, J. E. Stuart as traffic manager, and M. W. Stuart would be in charge of operations. Its operating department is to be headed by an experienced pilot, who has had recent experience as a flight superintendent with TWA. Applicant also proposes to employ an experienced and competent superintendent of maintenance and engineering. Since March 1944 the applicant, operating as Blue Grass Airlines, has been continuously rendering scheduled service as a common air carrier of passengers and property within the State of Kentucky.

Applicant's balance sheet as of April 10, 1945, discloses total assets of $357,956, consisting of $3,676 in cash, $69,204 in notes receivable, $37,500 in securities, $181,300 in real estate, $4,200 in life insurance, $11,975 in office furniture and miscellaneous personal property, $33,500 in aircraft, $3,000 in airplane parts and shop equipment, and $13,600 in motor coaches and automobiles. Liabilities in the amount of $21,380 consists of $21,000 in notes payable and $380 in an account payable. On this basis, applicant's net worth is $336,575.

Except for the items of airplanes, airplane parts, automobile, office, and shop equipment, the above asset items represent the assets of the three partners rather than the properties devoted directly to the airline operation. However, the partners' combined net worth, part of which embodies properties of the B. M. Stuart Finance Company, is to be available to finance the interstate operation. In addition to these assets, the American National Bank of Nashville, Tenn., is committed, if this carrier is certificated for its proposed operation, to furnish the partnership a loan of $240,000 on equipment trust certificates to finance its equipment purchases at the rate of 4 percent per annum, with a final maturity date of 38 months.

Blue Grass estimates its capital investment requirements at $395,060. This figure is to include $203,200 for 5 aircraft, $67,900 for 14 aircraft engines, $24,000 for 16 aircraft propellers, $8,640 for aircraft radio equipment, $26,500 for flight equipment and flight-equipment spare parts and assemblies, $35,000 for ground-

communication equipment, $20,000 for shop equipment, and $10,000 for office equipment. No estimate was made for working capital. Assuming capital expenditures of $395,060 to be the minimum necessary to commence operations, the promised bank loan of $240,000 would leave an additional amount needed of $155,060.

Blue Grass expects to derive annually $556,351 in passenger revenue, $88,530 in express and freight revenue, and estimates that it needs $253,129 in mail pay for total operating revenues of $898,011, or 46.22 cents per revenue mile. It estimates operating expenses in the amount of $716,890, or 36.9 cents per revenue mile. Of the total operating expense, direct flying expense is estimated at $453,710, ground and indirect at $144,160, traffic and advertising at $34,700, and general and administrative at $52,500. On the basis of applicant's estimates of revenues and expenses, it will have a net operating income of $181,121 annually.

Commonwealth Air Transport.—Commonwealth Air Transport was organized on October 25, 1945, under the laws of the State of Louisiana, with an authorized capitalization of $1,000,000. All of its stockholders, directors, and officers are citizens of the United States.

As of April 23, 1945, only a total of $8,000 of the corporation's authorized capital stock had been paid in. In an affidavit dated May 22, 1945, the corporation's 13 stockholders stated that they together had a net worth in excess of $1,0.0,000, free of all debts and legal obligations. The stockholders will subscribe for the stock in accordance with the company's financial needs. In the event it is awarded a certificate, applicant proposes to issue $500,000 in capital stock.

The president of Commonwealth Air Transport, E. E. Stoker, has had long experience in industry and finance in Cincinnati, Ohio. P. G. Vondersmith is applicant's vice president and general manager. He is also the president of the Cincinnati, Newport & Covington Railway Company but he holds stock in the latter company only sufficient to qualify him as an officer and director. Other than Vondersmith's office and minor financial interest in the surface carrier, there is no tie between the applicant and the Cincinnati, Newport & Covington Railway Company. In addition to his experience in surface transportation, Vondersmith was actively engaged in the organization, development, and management of Continental Airlines, Inc. However, except for Vondersmith, none of the officers or directors of the applicant has had experience in aviation or transportation. Stephen L. Blakely, applicant's secretary, has successfully practiced law in Covington since 1903; Howard W. Edwards, treasurer, is a Cincinnati industrial executive. Each of the foregoing officers is also a director. The remaining 9 stockholders are prominent Cincinnati businessmen.

Although Commonwealth does not at present have a permanent organizational basis, it has submitted full plans for the establishment of a complete operating organization. As superintendent of engineering and maintenance, it proposes to employ a man long identified with the air transportation industry, both as an executive and as maintenance superintendent for major airlines. Commonwealth has also made tentative arrangements with a high ranking officer of the Air Transport Command to act as superintendent of operations. It further proposes to fill other operating positions with men who had served in the armed forces after such training as may be necessary to qualify them for service in local air transportation.

Commonwealth proposes to purchase nine aircraft, one of which will be used as a spare. It tentatively plans to use Lockheed Saturn 14-passenger planes, but it proposes to make no final choice of plane until it has surveyed the newest aircraft manufactured for a plane suited for the service to be provided. However, it bases its traffic estimates and estimates of expenses and revenues for the purpose of this proceeding on the use of the Lockheed Saturn.

To operate Commonwealth's proposed services an estimated $986,025 would be required for total capital investment. Of this amount $849,900 would be used for planes (nine Lockheed Saturns and one undesignated small plane), necessary spare engines and parts, and general equipment. The manufacturer's estimate places the cost of the Lockheeds at $778,500. By the use of joint radio facilities applicant proposed to reduce its total capital needs to $965,025. Applicant proposes to finance 80 percent of the $778,500 estimated cost for the nine Lockheeds by borrowing. A letter was submitted by Commonwealth from the Chase National Bank of New York City which indicated the bank's willingness to make a loan up to 80 percent of the cost of applicant's aircraft. Applicant estimates its required working capital at $157,775, thus leaving $500,000 in capital

funds to be provided directly by the corporation's stockholders. The record shows that the stockholders are able to provide the capital necessary to commence operations.

Passenger fares are set at 5 cents per mile. Passenger revenues of $742,200 and property and excess baggage revenues of $24,740, totaling $766,940 and averaging 31 cents per revenue mile are estimated for the first year. Applicant estimates the expense of operation for the first year, exclusive of fixed charges at $1,174,137, or 47.46 cents per revenue mile. After the allowance for interest of $13,300, or 0.54 cent per revenue mile per annum, the amount necessary to break even would be $420,497, or 17 cents per revenue mile.

In calculating its revenue and expense estimates, Commonwealth did not make a specific allowance for profit. However, it states that it would expect an allowance on its investment similar to that allowed to presently existing certificated carriers in mail rate proceedings. Allowing an 8-cent return on applicant's investment results in an annual mail pay need of $490,379.

Cotton Belt Airlines, Inc.—Cotton Belt Airlines, Inc., was incorporated under the laws of Kentucky in February 1944. A subscription agreement to purchase an aggregate of $50,000 of stock at $100 par value, when and if Cotton Belt is issued a certificate, has been signed by Dr. Edward Wilson, Jr., Dr. Charles B. Stacy, Dr. J. M. Brooks, Messrs. Frank Durham, Julian L. Saunders, and Logan E. Patterson, all of Pineville, Ky. These subscribers are collectively able to meet this commitment. The officers of the company are Dr. Edward Wilson, Sr., president, and Dr. Edward Wilson, Jr., secretary and treasurer. The directors are Lt. Commander J. F. Wilson, Dr. J. M. Brooks, Dr. Charles B. Stacy, and Mr. Logan E. Patterson. All are citizens of the United States.

Lt. Commander Wilson would operate the company with the assistance of Lt. Commander J. M. Frisek, Lt. J. W. Kesterson, Lt. T. H. Bookout, and Lt. R. H. Bookout, all officers in the Navy assigned to overseas duty at the time of the hearing. Lt. Commander Wilson has had extensive flying experience during the war in connection with convoys, anti-submarine patrol work, and other naval air services. The other officers have had comparable aviation experience. None of the officers or directors has had any actual transportation experience and the aviation experience of Lt. Commander Wilson and the other naval officers has been limited to naval aviation during the war.

Cotton Belt proposes to transport mail and property only in pick-up service over four routes. It proposes to use Stinson Sr. 10-C or a similar type of single-engine aircraft. Daylight contact service is proposed and applicant contemplates rendering skip-stop operations. Cotton Belt proposes to base its operations at Atlanta where it expects to enter into a contract with a fixed-base operator to provide necessary ground facilities. Six airplanes would be needed for the proposed routes, and applicant expects to be able to secure such equipment through the Reconstruction Finance Corporation. In that event $46,000 would be needed to inaugurate the proposed service, otherwise "considerably more" will be required. Applicant believes that it would have no difficulty in raising more than the estimated $50,000 capital by subscription from the naval officers who will assist in the operation.

Gillespie Airways.—Gillespie Airways, a proprietorship wholly owned by Mr. J. D. Gillespie, seeks a certificate authorizing air transportation of persons, property, and mail over certain proposed routes in the region known generally as the Tennessee Valley. Mr. Gillespie resides in Nashville, Tenn., and is a native-born citizen of the United States.

He began flying in 1936 and has logged over a thousand hours of cross-country time. Since 1942 Gillespie Airways has operated as a fixed-base operator at Nashville, Tenn. It operates its own airport at Nashville and operates under lease the Kenneth D. McKellar Airport at Jackson, Tenn. It is also engaged in the purchase and sale of aircraft, flight instruction, charter operation, and aircraft repairs. As of the date of the hearing Gillespie Airways employed 44 persons, including 11 mechanics at Nashville, 6 at Jackson, 4 full-time pilots, and 5 pilots employed on a commission basis. It owns 18 airplanes, 3 of which are being used for charter service.

Mr. Gillespie has participated actively in the management of his company since its inception. His father, Mr. T. H. Gillespie, vice president and general manager of the Werthan Bag Company of Nashville and New Orleans, a large manufacturing concern, has given financial aid and advice to Gillespie Airways. Mr. A. J. Pelletieri, the applicant's general manager has a background in aviation principally as an educational and vocational instructor. Aside from directing appli-

cant's business as a fixed-base operator for the past 3 years, Pelletieri has been in charge of applicant's planning and promotional activities.

Gillespie Airways seeks authorization for scheduled air transportation over a series of six routes, all radiating out of Nashville, as base, and terminating respectively at Kingsport and Chattanooga, Tenn., Muscle Shoals, Ala., Louisville, Ky., Evansville, Ind., and Memphis, Tenn.

The balance sheet of the applicant as of December 31, 1944, shows approximately $33,000 in current assets and about $101,000 in aircraft and equipment after depreciation. Current liabilities amounted to approximately $36,000 and other liabilities represented by mortgages payable totaled approximately $98,000. The company's net worth was about $2,000.

The applicant's data on the necessary capital expenditures were prepared in consultation with a representative of the manufacturer of the Beechcraft 18-S plane. Gillespie Airways estimated flight equipment expenditures of $374,110, which is to include $243,840 for 6 planes, $67,900 for 14 aircraft engines, $21,000 for 14 aircraft propellers, $9,870 for aircraft radio equipment, $1,500 for miscellaneous flight equipment, and $30,000 for spare parts and assemblies. Investment in hangar, shop equipment, and office and miscellaneous equipment brings the capital investment to $550,000. In addition to this investment applicant has provided an item of $50,000 to cover miscellaneous capital expenditures not now foreseeable and estimates the working capital required at $150,000.

The foregoing estimate of capital investment indicates total capital requirements of $750,000. Although $50,000 of this total is intended to cover unforeseeable equipment expenditure, it appears nevertheless that about $700,000 or $750,000 would be needed to commence operations. The applicant sets up $1,000,000 as the total capital to be authorized.

Piedmont Aviation, Inc.—Piedmont Aviation, Inc., was incorporated under the laws of North Carolina on July 2, 1940, with its principal offices located at Winston-Salem, N. C. Three thousand shares of common stock of $10 par value per share have been issued, of which 1,846 shares are held by Thomas H. Davis, 1,151 shares by L. S. McGinnis, and 1 share each by Egbert L. Davis, Jr., Milton F. Fare, and James Frank Groat, all of whom except Mr. Fare are directors. The officers of the company are Thomas H. Davis, president and treasurer, James Frank Groat, vice president, and Milton F. Fare, secretary. All of the officers, directors, and stockholders are citizens of the United States.

The aviation experience of Mr. Thomas H. Davis, president-treasurer of Piedmont, dates back to 1934. In 1939 he became sales manager of Camel City Flying Service and in connection therewith traveled extensively throughout the proposed territory demonstrating various types of aircraft. Mr. Davis served as vice president, treasurer, and director of Piedmont from July 1940 until June 25, 1943, when he became president-treasurer and a director. He presently holds a commercial pilot certificate and has logged approximately 3,500 flying hours. Mr. Davis is a member of the North Carolina Aeronautics Commission.

Mr. Groat is presently vice president of Piedmont and chief pilot. Mr. Fare was formerly an accountant with Armour and Company and later employed by the accounting firm of Ernest and Ernest. He joined Piedmont in 1940 and was appointed chief accounting officer and assistant secretary in 1941. Mr. Fare became secretary of Piedmont in 1944 and has continued supervision of its accounting department since that time.

Piedmont estimates that approximately $1,100,000 will be needed to finance its proposed operations. It is proposed that this capital be raised by the issuance of 70,000 shares of common stock at $10 par value per share, and by borrowed capital in the amount of $400,000. The Wachovia Bank and Trust Company of Winston-Salem has agreed to grant applicant a term mortgage loan of $400,000 which will be secured by the latter's flight equipment.

Piedmont's annual revenues estimate for air mail pick-up service are based on 2,936,040 miles flown and a 92-percent completion factor. As a basis for the estimates of mail to be handled on applicant's proposed pick-up routes, the 1942 postal receipts on All American Aviation's route No. 49 was used. All American's experience indicates that small cities have a much greater volume of air mail for pick-up routes than do the larger ones. It was estimated that the 15 pick-up routes would have an air mail potential of 2,203,882 pieces of mail monthly. After certain reductions for so-called focal points, the estimated air mail potential for the entire system was scaled down to 1,871,446 pieces of air mail monthly. It is

estimated that on the basis of 8 cents per piece of air mail the gross postal revenues would be $149,716 monthly and $1,203,572 annually. Applicant estimated that $29,360 would be derived annually, or 1 cent per revenue mile for the carriage of express and freight.

Applicant estimates that in addition to the $29,360 estimated annual revenue, or 1 cent per revenue mile, which would be received for the carriage of express and freight it would need $1,203,572 in mail pay, or 40.99 cents per revenue mile, in order to produce an 8-percent return on its investment of $650,000 in the air mail pick-up operation.

Piedmont's operating costs are estimated at 41.99 cents per revenue mile which consist of total operating expenses of 38.44 cents per revenue mile, 0.39 cent per revenue mile for deductions from income, and 3.16 cents per revenue mile for interest on investment.

Piedmont's estimates of annual revenue for its five passenger, mail, and property routes are based on 1,523,043 miles flown and an 86-percent completion factor. Applicant estimates that with an average load factor of 4.81 passengers at a fare of 5.5 cents per revenue mile it would receive annual passenger revenues of $403,061, or 26.46 cents per revenue mile. Express and freight revenues are estimated at $15,230, or 1 cent per revenue mile. In order to produce an 8-percent return on the invested capital of $450,000 in its passenger, mail, and property operation, Piedmont estimates that $330,785 mail pay, or 21.76 cents per revenue mile, would be required. Piedmont's operating costs for its five passenger, mail, and property routes are estimated at 49.22 cents per revenue mile, which consist of total operating expenses of 44.49 cents per revenue mile, 0.51 cent per revenue mile for deductions from income, and 4.22 cents per revenue mile for interest on investment.

Prairie Airlines, Inc.—Prairie Airlines, Inc., was incorporated under the laws of Mississippi on July 5, 1945. Applicant was incorporated with initial capitalization of $5,000, this being deemed sufficient money to be used in the preparation and presentation of its application. The present capitalization is represented by 100 shares of stock, all of which have been subscribed, and 35 percent of the purchase price has been paid into the company. Two shares of such stock have been subscribed by each of 50 stockholders, all except one of whom are citizens of the United States. All officers and directors of applicant are citizens. If a certificate should be authorized by the Board, the capitalization will be increased to $200,000. In such an event, the present stockholders whose aggregate net worth is estimated at approximately $1,540,000, would be accorded the privilege of subscribing to the additional 1,950 shares before such stock would be offered to the public. The duly elected officers of applicant are E. W. Scott, president, M. S. Camp, vice president and general manager, Will E. Ward, vice president and general counsel, C. C. Hollingshead, secretary, and H. C. Bell, treasurer, while the board of directors is composed of C. Q. Sheely and W. B. Owen in addition to the above-named officers.

None of the officers or directors of applicant except Mr. Camp has had any experience in any phase of aeronautics or transportation. E. W. Scott, who is president of Prairie Airlines, is a partner in Blumenfeld & Fried, one of the largest wholesale grocery establishments in north Mississippi, and is active directing manager in charge of said business. He is also a member of the board of directors of the Security State Bank of Starkville, Miss.

Will E. Ward is a practicing attorney at Starkville and he has practiced the profession in that city since January 1, 1914. C. C. Hollingshead owns and operates a general insurance agency in Starkville, large plantations in Oktibbeha County and is active in civil and social life of the community. H. S. Bell is a distributor in north Mississippi for Sinclair Oil Company and operates an extensive automobile service-station busines, distributing gasoline, oil, and motor products. W. S. Camp has been continuously engaged in aeronautical activities for a period of more than 15 years. His flying experience extends back to 1926 and he has accumulated more than 3,000 hours of solo flying in various types of aircraft. Mr. Camp is the owner and operator of Starkville Fying Service operated from the Oktibbeha Airport. He also is the owner of this airport consisting of 700 acres of land, and of 4 major buildings of hangar type, together with utilities, shop, 16 aircraft, and flying equipment. The Oktibbeha Airport is located approximately 10 miles from Starkvile Municipal Airport out of which the proposed service would be operated.

If the proposed service is authorized, all of the maintenance and overhauling facilities of the Starkville Flying Service will be made available to applicant.

All of the employes of the Starkville Flying Service, including pilots, certified mechanics, helpers, and office personnel will be utilized on a part-time basis or otherwise as may be deemed necessary. This will result in unusual economy of operation for applicant in view of the fact that it will eliminate the necessity of employing a considerable number of full-time employees at the beginning of the service.

Prairie seeks a certificate authorizing the carriage of persons, property, and mail, (1) between Starkville, Miss., and Jackson, Miss., (2) between Starkville and Birmingham, Ala., and (3) between Starkville and Memphis, Tenn. The distances between the termini on routes 1, 2, and 3 are 115, 117, and 147 miles, respectively. It is proposed that all of these routes be flown nonstop with all schedules to originate and terminate at Starkville. Applicant expressed a willingness to accept a certificate restricting its service so that every inbound flight would have to terminate at Starkville.

Prairie estimates anual passenger revenue at $35,275. This figure is based on an 85-percent operating factor, or 235,170 revenue miles flown, a 50-percent load factor amounting to an average of 3 passengers and calculated at 5 cents per mile. Express revenue is estimated at 5 percent of the passenger revenue, or $1,764, making a total of $37,039 which would be derived from passenger and express revenues. Applicant estimates that mail pay of 24 cents per revenue mile will be needed in order to produce total annual operating revenues of $93,480.07.

Prairie's annual operating costs are estimated as follows: administrative and general $8,824; operations $43,732.90; maintenance $17,000; traffic $6,050; and depreciation $13,400, totaling $89,006.90. Since applicant estimates its annual operating revenues at $93,480, based upon the above estimated operating costs its annual net profit would be $4,473. However, applicant believes that it can exceed the estimated 50 percent load factor within a reasonable time after the operations have been inaugurated.

Seaboard Air Transport, Inc.—Seaboard Air Transport, Inc., was incorporated under the laws of North Carolina on July 31, 1943. The officers of the company are Horace M. Barnes, president-treasurer, and Mary V. Barnes, secretary. The directors are Messrs. Horace M. Barnes, John Stedman, Rye B. Page, and Virgil Sullivan. The directors of applicant are citizens of the United States.

The aviation experience of Lt. Horace M. Barnes dates back to 1927. In 1931 he became traffic manager and pilot of the Universal Flyers, Inc., an organization operating a fleet of Ford trimotor airplanes on educational tours of the United States. In 1932, Lt. Barnes resigned to open his own business, a general flying service at Lumberton and Greenville, N. C., and in 1939 his company was selected to serve in the Civilian Pilot Training Program for the army. During this period his business grew to substantial size and included a modern repair and overhaul base at Lumberton. The main offices and hangars are still owned by Lt. Barnes, although at the time of the hearing they were under lease to the United States Army Air Corps. In 1943 he received a commission in the Navy air forces and served as a pilot in the Naval Air Ferry Command until September 1944, when he was assigned to the staff of the commander of the Naval Air Ferry Command as ferry control liaison officer. In addition to the holding of the office of president-treasurer, Lt. Barnes will serve as general manager in charge of the entire operation. He will be assisted by an administrative assistant who will serve as operations manager. Major Robert Hurley, formerly chief pilot and traffic manager of Western Air Service and later chief of all traffic control for the Civil Aeronautics Administration on the west coast, has been tentatively selected for this position. Major Hurley has a wide and varied background in this type of work and would also act as traffic manager and be in charge of sales, advertising, publicity, and passenger service for applicant.

The original authorized capitalization of Seaboard was $100,000 consisting of 2,000 shares of capital stock at $50 par value per share. By resolution of the board of directors on January 15, 1945, the authorized capital stock was changed from $100,000, consisting of 2,000 shares having a par value of $50 per share, to an authorized capitalization of $350,000, consisting of 350,000 shares having a par value of $1 per share. Approximately 229 shares of such stock have been issued, 150 shares of which have been sold to Horace M. Barnes, 75 shares to Virgil Sullivan and associates, and 1 share each to John Stedman, Mary V. Barnes, K. M. Barnes, and Rye B. Page.

The New York firm of Granberry, Marache and Lord has a commitment to purchase 105,000 shares of Seaboard's capital stock and options for 50,000 additional shares for the total sum of $300,000, if the proposed service is authorized.

This company had advanced between $7,000 and $8,000 to Seaboard prior to the hearing based on its belief in the latter's future prospects. The Scottish Bank of Lumberton has indicated its willingness to aid in any necessary financing of applicant's proposed operations, if such authority is granted.

Seaboard's annual revenue estimates are based on 963,162 revenue miles flown and a 90-percent completion factor. Applicant proposes a fare of 5 cents per passenger-mile, and it is estimated that sufficient traffic would be generated to maintain a 60-percent load factor, or an average of 8.4 passengers per revenue mile. On this basis, Seaboard estimates that it would receive annually passenger revenues of $404,528, or 41.99 cents per revenue mile, while revenues derived from the carriage of express and freight would be $5,779, or 0.60 cent per revenue mile, and from excess baggage $4,334, or 0.45 cent per revenue mile. Seaboard estimates its operating expenses at 48.92 cents per revenue mile, so that it would require mail pay of $56,640, or 5.88 cents per revenue mile, in order to break even.

South East Airlines, Inc.—South East Airlines, Inc., was incorporated under the laws of North Carolina in September 1944. It is capitalized at $100,000 consisting of 1,000 shares of common stock at a par value of $100 per share.

The officers of the company are R. B. Babington, president, William C. Teague, vice president in charge of operations, Charles T. Kilgore, Jr., vice president in charge of maintenance, and Royall H. Schaefer, secretary-treasurer. The directors are Thomas K. Gaither, Norman W. Johnson, M. J. Tainio, Earl L. Teague, G. B. Whetstone, A. L. Burnham, Samuel D. Christy, Franklin J. Mott, Jr., and William David Carrier, Jr. All of the officers, directors, and stockholders are citizens of the United States.

Mr. Babington is engaged in the insurance and mortgage loan business at Gastonia, N. C. He is president of the State Finance Company and the Gastonia Insurance Exchange, director of the Gastonia Mutual Building & Loan Association, and secretary-treasurer and also a member of the Gastonia Township Airport Commission. Mr. Babington holds a private pilot's certificate and has flown approximately 250 hours in single-engine aircraft.

South East proposes to conduct operations over 10 routes, 4 of which would involve a pick-up service only for mail and express. The company expects to use Charlotte as its base and all services would radiate out of that city. Beechcraft Model 18-S aircraft may be utilized, but applicant would use the best type of equipment available at the time the proposed services are inaugurated. It is contemplated that three airplanes would be used on each of the proposed operations and that such aircraft be equipped to operate in day or night service. Applicant proposes to use the pick-up equipment presently utilized by All American or some other comparable or superior pick-up device that might be available.

South East contemplates the amendment of its charter, if the proposed service is authorized, to provide for capital funds in the amount of $500,000, consisting of $400,000 in 10-year 6-percent sinking fund debentures or equipment trust debentures, $50,000 in Class A nonvoting common stock at $12.50 par value, and $50,000 in Class B voting common stock at $100 par value. Of the $50,000 of Class B voting common stock $48,700 has been subscribed for by the 13 original incorporators. Of the $48,700 subscribed, $1,300 has been paid into the company and $23,500 has been deposited in escrow with the Citizens National Bank at Gastonia, N. C., for payment of the subscribed stock if a certificate is issued by the Board.

It is estimated that $916,404 in mail pay would be needed for the first year based on a 100-percent completion factor which would give applicant an additional return of 28.8 cents per revenue mile for the mail and express pick-up routes. On this basis the estimated yearly revenues would be $1,093,232 for the entire system, or 39.8 cents per revenue mile. South East's operating costs are estimated at 39.8 cents per mile.

South East Airlines.—South East Airlines, an applicant in the *Great Lakes-Florida* case, was incorporated under the laws of the State of South Carolina on December 15, 1943. As of the date of the hearing the total amount of stock issued and outstanding consisted of 500 shares of common stock with a par value of $100 per share.

R. Z. Cates, president, J. Roy Pennell, secretary-treasurer, and M. L. Cates, director, each own 60 shares of stock. Hamish Turner, vice president and general manager, owns 166 shares and Robert F. Turner, vice president and operations manager, 154 shares. It was testified that if a certificate is issued to South East,

1,500 additional shares of common stock will be issued to these subscribers in amounts proportionate to their present holdings.

South East anticipates a permanent capitalization of $200,000 which will be available if a certificate is granted. It proposes to borrow an additional $350,000, thus making $550,000 available in cash. Estimated capital requirements amount to $507,450.

Aircraft similar to the Model 18-S Beechcraft will be used, which will accommodate about 10 passengers. A company-owned shop for overhaul of engines, propellers, and instruments is not contemplated at the beginning, and general overhauling would be done by the service department of the manufacturer where such service is available. All flights would be contact flights and, because of the short distance between stops, most flights would be at reasonably low levels. Since only portions of the proposed routes are presently equipped with airway facilities, most of the flights would be made during daylight hours. The applicant does not contemplate its own radio communication facilities. Based on a passenger fare of 5.5 cents per mile, a 50-percent load factor, and a 95-percent performance factor, applicant estimates a loss of $16,200 before mail pay.

Southeastern Air Express, Inc.—Southeastern Air Express, Inc., was incorporated in 1941 under the laws of Georgia. Officers of the corporation are Wesley N. Raymond, president, E. Cody Laird, vice president, Edward W. Swift, Jr., vice president, W. H. Young, Jr., secretary, Ben T. Smith, treasurer, and John F. Lewis, assistant secretary and assistant treasurer. Corporate directors are Messrs. Raymond, Laird, Swift, Young, and Smith, R. H. Hardaway, Jr., and Robert Richardson. All of the officers, directors, and stockholders are citizens of the United States and residents of the area to which service is proposed.

Capital stock outstanding totals 35,000 shares at a par value of $1.00 per share. Ownership of these is in Southeastern Air Service, Inc., holding approximately one-third, Columbus Airways, Inc., holding about one-third, Wesley N. Raymond, Robert R. Richardson, Clement A. Evans, and Walter James together holding the remaining one-third.

Southeastern's proposed service covers nine routes operating principally in Mississippi, Alabama, Georgia, and South Carolina. Southeastern asserts that its primary goal is to provide a safe and economical local air service in the southeastern states which will augment the air traffic of the trunk-line carriers. Plans call for day contact operations and a publicity campaign to develop high load factors and lower operating costs to make possible progressively lower fares.

Converted Beechcraft type 18-S aircraft are contemplated for use in initial operations, having capacity for eight passengers and a crew of two. Southeastern anticipates the availability of an airplane designed especially for short-haul feeder-type operations having a greater passenger capacity than the Beechcraft. Such aircraft would be acquired as soon as possible. Ten Beechcraft planes would be purchased to start operations as well as other equipment items including 8 spare engines and propellers, 15 aircraft radio stations, six 400-watt and 60 low-power airway radio stations, one link trainer, station office and ramp equipment for 57 points, spare parts stock, automotive equipment and radio shop equipment. Engine, instrument, and propeller overhauls would be done elsewhere on a contract basis at the outset.

Southeastern estimates its total capital requirements at $560,000. This amount includes $175,000 for cash payment on flight equipment, $31,400 for other equipment, $318,600 for operating capital, and $35,000 for deferred organization expenses. At the time of the hearing $18,240 had been spent for organization purposes and it was anticipated that $35,000 would be spent by the time a decision is rendered on the application. The Trust Company of Georgia has given Southeastern a written commitment to finance up to 75 percent of the purchase of $700,000 worth of Beechcraft airplanes on the security of equipment trust certificates. A stock subscription agreement is in effect between the promoters of Southeastern to raise $500,000 capital at the time of receiving a certificate. Mr. Raymond testified that no difficulty would be experienced in raising additional capital up to $200,000 by sale of additional stock to the promoters or to the general public if Southeastern is certificated. Applicant estimates nonmail revenues for the first year of operations at $717,821, and total operating expenses at $1,540,111.

Southern Airways, Inc.—Southern Airways, Inc., was incorporated under the laws of Delaware on July 7, 1943, with its principal offices located at Birming-

ham, Ala. As of April 24, 1945, the duly elected officers and directors of the corporation, over two-thirds of whom are known to be citizens of the United States, were Frank W. Hulse, president and director, Ike F. Jones, vice president and director, W. F. Underwood, vice president, T. A. Mott, Jr., vice president, J. C. Leach, secretary-treasurer and director, and I. R. Ball, assistant to the president and director. Its president and principal stockholder, Frank W. Hulse, is also president and principal stockholder of five other companies, each of which has been or is engaged exclusively in some phase of aeronautical activities in the southeastern part of the United States. These companies are Southern Airways, Inc., of Georgia; Southern Airways, Inc., of South Carolina; Southern Airways Sales Company of Alabama; Southern Airways, formerly Southern Aviation School, of South Carolina; and Southern Airways, Inc., formerly Southern Aviation Training School, of Alabama.

Southern Airways, Inc., of Alabama, Southern Aviation School of South Carolina, and Southern Airways, Inc., of Georgia, participated in numerous flight training courses for the Army Air Corps at Decatur, Ala., Camden, S. C., and Atlanta, Ga., respectively. Southern Airways, Inc., of Georgia also conducted a fixed-base operation at Atlanta. In the latter part of 1944 Southern Aviation School of South Carolina, purchased the physical assets of Southern Airways, Inc., of Georgia, and took over the fixed-base operations of the latter at the Atlanta Airport, Atlanta, Ga. At the same time Southern Aviation School, of South Carolina, changed its name to Southern Airways, and the Georgia corporation became temporarily inactive insofar as actual operations are concerned. The other two, Southern Airways, Inc., of South Carolina, and Southern Airways Sales Company, of Alabama, also participated in extensive flight training courses for the armed services and are engaged in fixed-base operations at Greenville, S. C., and Birmingham, respectively. The services of each of these companies presently conducting fixed-base operations consist of student flight instruction, charter flights, sales, airplane and engine overhaul, and servicing of aircraft.

Under Southern's charter it is authorized to issue 250,000 shares of common stock of no par value. As of April 24, 1945, it had issued and outstanding 150,000 shares. The record shows that at least 75 percent of the voting interest of the issued and outstanding stock of applicant is owned by citizens of the United States.

Frank W. Hulse became interested in aviation in 1927 when he began to take flying lessons at Daniel Field, Augusta, Ga., and later was employed at the airport. After receiving his pilot's license in 1929 and graduating from Georgia Tech in 1934, Hulse returned to Daniel Field and later became airport manager and also station manager for Delta Air Lines. In 1936 he and his associate, I. F. Jones, purchased a controlling interest in Southern Airways, Inc., of Georgia. As station manager for Delta, airport manager of Daniel Field, and president of Southern Airways, Hulse's duties included flight instruction, piloting charter trips, handling reservations, ticket sales, ground service, supervision of the radio station, traffic promotional work, engine and aircraft overhaul, and aircraft sales.

The total capitalization required has been estimated at $1,400,000 of which $318,640 will be set aside as working capital. Of the total expenditures of $1,081,360 estimated as necessary for equipment, $885,860 will be required for flight equipment, which includes 14 aircraft, $568,960; 35 aircraft engines, $169,750; 35 aircraft propellers, $52,500; aircraft radio equipment, $21,150; miscellaneous flight equipment, $3,500; and flight equipment spare parts and accessories $70,000. The remaining $195,500 is for other property and equipment including station communication equipment at $75,000; hangar, shops, and ramp equipment, $79,500; motorized vehicles and equipment, $6,000; office furniture and fixtures, $25,000; and miscellaneous ground equipment, $10,000. An administration building and hangar, valued at $94,991, which is presently owned by applicant, will be utilized for the proposed service.

Applicant's balance sheet as of June 6, 1945, shows a net worth of $164,803, of which approximately $54,000 is on deposit in banks and invested in government bonds. The Equitable Securities Corporation, Nashville, Tenn., has entered into an agreement with applicant to underwrite 250,000 additional shares of common stock at $1 per share and 12,000 shares of 5½ percent preferred stock at $25 par value. This, together with the liquid assets on hand, would amount to approximately $600,000, which would be adequate to cover working capital and cash payments for flight and ground equipment. The Equitable Securities

Corporation is a substantial investment house with capital and surplus of about $2,000,000 and it has heretofore participated in underwriting stock for American Airlines, Inc., Braniff Airways, Inc., and Chicago and Southern Air Lines, Inc. It has agreed to purchase or underwrite applicant's stock with a view to redistributing it to investors as a "business man's risk." The American National Bank of Nashville and the Trust Company of Georgia each have agreed to grant one-half of a loan of $800,000 to applicant for the purchase of equipment. The loan will be covered by equipment trust certificates, to be repaid in 60 equal monthly installments at 4 percent interest.

Revenue estimates of the first year are based on 3,410,910 revenue miles flown, or approximately 80 percent of the revenue mileage for the second year. The average passenger load per revenue mile for the first year is estimated at 2.22, for the second year 3.55, and for the third year 5.68, with the average for the 3-year period 3.82. The estimated operating revenue is 47.72 cents per revenue mile as against a total operating cost of 42.75 cents leaving a net profit of $352,886 before income taxes for the first 3 years, based on a total of 11,935,168 revenue miles. Applicant's estimated mail pay requirements includes an amount which would yield 10 percent return on its investment in physical equipment. This is expected to result in mail pay per revenue mile of 37.69 cents for the first year, 26.68 cents for the second year, and 16.69 cents for the third year in order to realize a net profit of $117,632 before income taxes for each of the first 3 years. Applicant estimates that revenue from excess baggage, freight, and express will each amount to approximately 2 percent of the passenger revenue.

Southern Aviation Corporation—Southern Aviation Corporation was incorporated under the laws of Tennessee on January 27, 1941, with its principal offices located at Nashville, Tenn. It has an authorized capital stock of 300,000 shares of $1 value. There are 78,000 shares of stock outstanding, for which about $50,000 has been paid into the company. Of this amount the company has only about $5,500 in cash and a claim for approximately $16,000 from the United States Government as a termination settlement on a cadet-training contract. For a period fu 1943 and 1944 Southern Aviation devoted its facilities and personnel to the training of Army Air Forces cadets under the joint supervision and direction of the Army Air Forces and the Civil Aeronautics Administration, but it has engaged in no flight operations since the termination of the training program in July 1944.

Norman A. Thomas, president, treasurer, and director, has operated radio station WDOD at Chattanooga, Tenn., for the past 20 years and has also conducted a radio sales and service business for approximately 10 years. He is a pilot and served as a material officer at the Naval Air Station, Pensacola, Fla., having charge of transport, materials, and radio communications.

Southern Aviation contemplates at the beginning to inaugurate only air mail and air express pick-up service. Such service would be rendered for an initial period of at least 6 months until both the operation and routes have proved themselves. Applicant expects to use the pick-up device presently used by All American, but no contract for the sale or leasing of such equipment has been entered into by the parties.

If the proposed operation is authorized, applicant would serve twice daily 90 towns, 83 of which presently have no air service. Only 37 of these 90 communities presently have airport facilities, while there are proposals to construct airports at 14 of the remaining 53 towns located on the proposed routes. After the initial period of approximately 6 months when Southern Aviation expects to begin the transportation of passengers, it plans to render only pick-up service for mail and cargo at communities where there are no airports and will land its aircraft for passengers at those towns having airports when the traffic potentials justify such stops.

Southern Aviation will use seven aircraft in its operations, which will be based at its terminals at Nashville, Memphis, and Knoxville. It will at the beginning use Stinson SR-10-C type of aircraft or some similar single-engine equipment. One airplane will be assigned to each route and will carry passengers while performing pick-up service. At the beginning only daylight contact service will be rendered and each of the six aircraft utilized will be flown approximately 6 hours daily. When additional aircraft become available and after applicant has inaugurated passenger service, it is proposed to change over to twin-engine equipment using Beechcraft or some other similar aircraft.

As stated, Southern Aviation has an authorized capital stock of 300,000 shares at $1 par value. Of the 222,000 shares of stock remaining to be issued, applicant's president, Norman A. Thomas, has subscribed for 50,000 shares at $2 per share payable when and if a certificate is granted, while Mr. Richard Chattin, a director, has orally indicated his willingness to subscribe to 50,000 shares at the same price. Messrs. Thomas and Chattin are financially able to meet these commitments. Although there have been no attempts on the part of the management to solicit stock subscriptions from the general public or enlist the aid of any bank or financial institution in the disposition of the remaining stock to be sold, it appears that its directors and stockholders are financially able to furnish such funds as may be necessary to inaugurate the proposed service.

Southern Bus Lines, Inc.—Southern Bus Lines, Inc., presently operates an extensive bus system. Through a departmental division to be known as Southern Airlines it proposes to establish a local air operation in the general area covered by its motor coach routes to provide an improved transportation service to the traveling public. The original application was filed in the name of Tri-State Transit Company of Louisiana, Inc. (Tri-State Airways). The change of corporate name occurred after the hearing in the case, at which time a consolidation of the properties of Tri-State Transit Co. and Interurban Transportation Company became effective. All officers of Southern Bus Lines are citizens of the United States. That corporation is wholly owned by Continental Motor Coach Lines, Inc., a corporation of the State of Delaware, which in turn is wholly owned by the Beneficial Industrial Loan Corporation, another Delaware corporation. This latter corporation is controlled by citizens of the United States. The citizenship of Southern Bus Lines is accordingly established within the definition of section 1 (13) of the Act.

Southern Bus Lines started operations in the motor transporation field when that business was in its infancy in the South. Its original routes went short distances out of Shreveport, La. Its present system extends to St. Louis on the north, east to Nashville, Birmingham, and Mobile and west to Port Arthur, Beaumont, Shreveport and Texarkana. As of December 31, 1944, it was certificated as a common carrier over 4,670 bus miles of highway. It operated approximately 2 million bus miles during December 1944. This applicant is a member of the National Trailways Association, a voluntary association of interstate motor carriers independent of the Greyhound Lines, grouped together to develop effective through schedules for long distance motor carriage.

Mr. C. V. Smith, president and treasurer, and the other officers of Southern Bus Lines all have a background of considerable experience in business management and motor-carrier operations. Mr. George A. Jones, the general manager of the aviation division, Southern Airlines, is the only executive with a background of aviation experience. He began his commercial flying in 1923 and has logged over 12,000 flying hours. From 1928 to 1940 he represented various manufacturers of aircraft or aviation products in distribution and sales. He served as C. A. A. flight supervisor, District No. 1, in 1940 and 1941. In 1941 he was school director at Hamford Field for 8 months. The following 2 years he was group commander at Dallas School of Aviation. In October 1944 he became the operations manager of Aero Transportes which operated over 2,700 miles of routes in Mexico. Many of the applicant's maintenance personnel, especially those returning from the armed forces have considerable experience and proper licenses for work on aircraft, engines, instruments, etc., and would be so utilized.

This applicant proposes a coordinated operation of bus and air routes. To some extent the proposed air routes would parallel existing bus routes omitting a number of intermediate points. To a greater extent the air routes cut corners off the bus routes to connect the large towns and cities by a much more direct route or extend somewhat beyond the fringe of the bus route area to serve points not now on its surface system. As previously noted, Southern Bus Lines' surface route lies to a considerble extent west of the Mississippi River and its original application for air routes covered the entire area of the surface operations.

Other aspects of the plan for coordinated operation call for connecting air-bus schedules, joint rates, and interchangeable tickets. Joint use would be made of ticket agents, terminal facilities, and certain administrative and supervisory personnel. Bus service to airports would be provided wherever practical.

Southern Bus Lines contemplates the use of 11 Beechcraft 18-S aircraft for initial operations. Nine planes would operate over the 13 routes to give one

schedule each way per day. The other two planes would be spares. One spare engine and propeller for each plane would be purchased. Initial operations would be on a daylight visual contact basis. Night flights would be added when operational conditions permit. Five ground radio stations would be set up for the initial daylight operations.

Estimated capital expenditures necessary to the initiation of the proposed service amount to $848,540. No specific estimate of organizational expense or operating capital was introduced, but with the entire capital of Southern Bus Lines pledged to the orderly development of the air service there is no question as to the ability of the applicant to finance this undertaking. The applicant estimated nonmail revenues for the first year of operation and total operating expenses at $1,080,031.

State Airlines, Inc., was incorporated under the laws of the State of Delaware in December 1939, and shortly thereafter qualified to conduct business in North Carolina and South Carolina. For several months prior to incorporation, while the company was in a formative stage, and until August 1941 when actual operations were inaugurated, State's activities consisted primarily of conducting extensive surveys to determine which points in the area would generate the greatest air travel per capita of the population. Since April 1941 State has operated a charter flying service based at Charlotte, N. C. The total number of persons employed by State at any one time since it was organized has varied from 4 to 16, depending upon requirements.

H. K. Gilbert, Jr., president, has been actively engaged in transportation for the past 17 years. During 1928 he served as agent for the Atlantic-Pacific Stages, Inc.; from 1929 to 1939 he held various positions with heavy duty automotive equipment manufacturers, the last of which was as sales manager of Differential Wheel Corporation. From May 1939 to date he has been president and director of State. Since organizing State Mr. Gilbert has devoted all of his time to the promotion and development of the company. George C. Henry, vice president and director, is an aviation security analyst with White, Weld and Company, New York City. A. Pagenstacher, III, secretary-treasurer and director, is a partner of Ingles-Snyder. The balance of the personnel are engaged in research, publicity, piloting, and maintenance. All of the officers, directors, and stockholders are citizens of the United States.

State contends that it is better qualified to furnish the service required in the southeastern area than any of the other applicants in this proceeding. It pointed out that with very few exceptions none of the other applicants has shown integration of its routes as State has done; that State has made exhausive notes of the needs of the area; that it is the only new applicant with firm commitments for raising the required funds and, finally, that it is the only new air carrier which has submitted realistic estimates of expenses based on actual experience. Established carriers, it contends, are not as well suited to render the necessary service because of their natural tendency to devote their efforts to promoting long-haul traffic, and it is impossible to serve the area adequately without frequent stops and the development of extensive short-haul traffic.

In selecting the type of equipment it expects to use in the proposed operation, State has considered adaptability and availability of several types of craft. It asserts that while short-haul aircraft developments are anticipated to provide greater economy and efficiency of operations, the most practical craft presently available is the Douglas DC-3.

For the total operation of 12 routes proposed by State the estimated capital requirements amount to $3,422,500. If only a portion of the 12 routes are certificated, such capital requirements would be greatly reduced. Hallgarten and Company has agreed to act as underwriter for raising the necessary capital to finance operations of whatever routes the Board may see fit to award to State. In addition State's president testified that the present stockholders are financially able and willing to purchase additional stock in substantial amounts necessary to finance the operation of the proposed routes.

Using the DC-3 State estimates that its total operating costs will be 68.7 cents per mile. On the basis of the 12 routes proposed by State it estimates total revenues at the rate of 66.6 cents per revenue mile including mail pay at 0.3 mill per pound-mile, which would indicate a deficit of 2.1 cents per mile plus allowance of a sum sufficient to allow a reasonable profit.

Virginia Airways.—Virginia Stage Lines, Inc., was incorporated under the laws of the state of Virginia in 1925 to operate motor vehicles over a 70-mile intrastate route in the state of Virginia. Since that time the company has extended its routes to 1,737 miles throughout Virginia, the northern part of North Carolina and the District of Columbia. Virginia Airways is the name of the aviation division of the applicant Virginia Stage Lines, Inc. It plans to provide complementary service to the areas now served by Virginia Stages and Carolina Trailways. With 20 years experience with local traffic in this area the applicant selected 24 cities on the basis of their traffic generating possibilities. It proposes schedules of a single round trip a day per route for initial operations using Beechcraft 18-S planes.

Inaugural schedules have been established to provide what is called "shopping tour" service for as many cities as possible (i. e., morning departures to major trade centers and afternoon return flights). The routes proposed for Virginia Airways either connect with or parallel the motor-bus routes of Virginia Stage Lines and associated motor carriers. It is planned that in every instance where feasible the facilities of the bus company will be shared by Virginia Airways. This would include, among other things, some supervisory, clerical, and ticket personnel as well as some maintenance and fueling facilities. In the smaller communities Virginia Airways proposes to reroute its motor-bus equipment to the airport so that direct bus-air connections can be effectuated, and by the development of interchangeable receptacles for mail and express to reduce greatly the time on the ground and to substantially eliminate costs to passengers in reaching airports. Passengers can also make use of existing stations, ticketing and baggage facilities, and waiting rooms used by motor bus passengers. The applicant estimates that this will result in a very substantial reduction in the operating costs required for air services.

Mr. S. A. Jessup has been president of Virginia Stage Lines since 1927. Mr. Jessup is also connected with the Monticello Dairy at Charlottesville, Va., which has seven plants in Virginia, the C and A Bus Company (street-bus system) in Charlottesville, is president of Safeway Trails, a bus company operating between Washington, D. C., and New York City, president of Safeway Transit of Wilmington, N. C. (a street-bus company), director of Peoples National Bank of Charlottesville, director of Virginia Auto Mutual Insurance Company of Richmond, and president, director, and owner of various other companies.

Mr. C. V. Boyd, traffic manager for the past several years, testified with respect to the many advantages which would be derived from the air-bus coordination such as the joint use of terminal facilities, ticket sales agencies, supervisory personnel, and possibility of motor transportation by bus from the city to the airport. Mr. Boyd stressed the point that the air service would be auxiliary, supplementary, and incidental to the bus operations and that every effort would be made to coordinate and operate schedules to connect with the trunk-line carriers.

The applicant proposes as its operations manager, Mr. H. P. Grim, owner of the Grim Flying Service, Inc., at Staunton, Va., and operator of the municipal airport at Staunton. He performs charter services there and also gives flight instructions. Mr. Grim testified that the applicant would start its flights at the Washington National Airport and would maintain an overhaul and maintenance base at the Hybla Valley Field near Arlington, Va., 5 miles southwest of Washington.

The applicant estimated that it would carry a total of 48,042 passengers per year including 15,776 from Washington alone. Passenger revenues based on a fare of 5 cents a mile together with express and freight revenues of 64 cents per ton-mile were estimated at $406,436 per year against total expenses of $723,830, leaving a deficit of $317,394 per year. The applicant estimates that this would require mail pay of 22.03 cents per revenue mile.

Virginia Central Airlines.—Virginia Central was incorporated under the laws of Virginia on February 8, 1944, with a capitalization of $5,000. Stockholders and directors are Abe Cohen, president, W. W. Edmondson, first vice president, W. D. Hodges, second vice president, and Sam Golden. W. G. Burnette, manager of the Lynchburg Chamber of Commerce and a practicing attorney, is secretary-treasurer and traffic manager.

The applicant proposes to raise money by the sale of stock to its present stockholders and others who are interested in air transportation. It points out that a large bank has voluntarily offered assistance and no doubt would lend sufficient funds for the needs of the company.

Based on a passenger fare of 5 cents per mile and a load factor of 52½ percent, the applicant estimates nonmail revenues at $1,934,427 annually. Operating expenses are estimated at $1,793,741 leaving a profit of $140,686. The company takes the position that economies of operation can be realized through honest, efficient, and economical management. It points out that it will have only two paid officers whose salaries will be moderate during the development of the company and only those employees who are absolutely necessary will be hired. The applicant stated that the business will be operated on a basis of keeping the operating expenses less than revenue received and sufficient business will be developed to operate at a profit without obtaining a subsidy from the Government.

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BEFORE THE

Civil Aeronautics Board

WASHINGTON, D. C.

Docket No. 501 et al.

In the matter of

THE SOUTHEASTERN STATES CASE.

PETITION OF STATE AIRLINES, INC. FOR RECONSIDERATION.

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Washington 6, D. C.
Dated May 8, 1947.

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In the matter of

THE SOUTHEASTERN STATES CASE.

PETITION OF STATE AIRLINES, INC. FOR RECONSIDERATION.

To the Civil Aeronautics Board:

State Airlines, Inc. (hereinafter sometimes called "State") respectfully petitions for reconsideration, and if deemed necessary or appropriate for reargument and/or rehearing with respect to the order of the Civil Aeronautics Board (hereinafter sometimes called "the Board") in the above entitled proceeding, dated April 4, 1947 and served upon the parties on April 8, 1947, insofar as the order failed to award to State Airlines, Inc. the authority conditionally granted to Piedmont Aviation, Inc.

INTRODUCTION.

Over five years ago, State Airlines, Inc., (a corporation of which 67 per cent of the stock is owned and controlled by veterans of World War II) applied for a certificate of public convenience and necessity, authorizing it to engage in local air transportation. Prior to that time, and at all times since, State has been preparing itself for the job of conducting such a service. For nearly four years its applications have been in process in one case or another. In the *Atlantic Seaboard Case*, Docket No. 445 et al., (in which State was an intervenor) the Board stated that it would set up an area proceeding for the Piedmont area in which State was and is particularly interested.

A new case was set up in 1943 which was first called the "Piedmont Case". After the prehearing conference and other preliminary steps in which numerous applicants were included, the case was expanded and the name changed to the *Great Lakes to Florida Case*, Docket No. 570 et al. State Airlines was properly a party to that case from the beginning. After about two years the decision in the *Great*

Lakes to Florida Case came out granting certain route extensions to certificated airlines, but *deferring decision on State's application* until the *Southeastern States Case,* Docket No. 501 et al., could be heard and decided.

As an applicant in the *Southeastern States Case,* Docket No. 501 et al., State Airlines supplied the most complete and detailed proof of any applicant in the case for the route system awarded to Piedmont Aviation, Inc. (Piedmont). State Airlines had been recommended by both Public Counsel and the Examiners for substantially such a route system.

The Board, after over five years of processing of State's application, has turned it down in favor of a non-veteran organization which probably put in the poorest case of any feeder applicant to receive a certificate or tentative award in *any* feeder case. Piedmont was awarded the route system (second largest feeder system, estimated to be 1719 route miles) for which it had not applied, and in fact its proof presented at the hearing was such that it should have not been found "fit, willing and able" to operate any route system, let alone the route system awarded.

When the Board finds that State's plans are built around one man it neglects to consider that State is a corporation owned and controlled 67 per cent by veterans who at the time of the hearing in this case were in the Armed Services. These men included many whose faith and interest in aviation was represented by their investment in State Airlines' future. It is difficult to believe that because of their very absence in their country's service, the largest stockholder being overseas at the time of the hearing, while Piedmont's two or three stockholders remained at home, State should be denied the route system it alone pioneered and proved necessary. Listed on page 6 of exhibit STA-G were State's two former directors who were in the Armed Forces overseas. Other personnel, such as Lowell S. Harding, a former vice-president of operations of a certificated airline (Colonial), a Major who was in charge of over 200 AT-6's, and a top maintenance expert who was in charge of a 250 man test group at Eastern Aircraft, were shown as available to State at the end of the war. Other specialists, such as a noted industrial designer and a vice-president of the Society of Automotive Engineers (EX-STA-66, p. 2), and other evidence of record all militate against the finding that State's plans are substantially built around one man.

The Board's opinion in comparing the experience of State and Piedmont neglected to say anything about the fact that State was one of the outstanding non-scheduled operators in the country. In nearly

four years of operation, it had inquiries, requests and trips totalling 1,639,664 passenger miles and had 1,436 passengers. The Board's Opinion failed to mention that State was the only non-scheduled carrier designated by the Air Transport Command to carry military passengers. However, all of this material was of record in this proceeding.

Piedmont's experience as shown in the Board's Opinion (p. 72) was largely flight training experience. On air transportation experience and an organization with specialists in air transportation, there is no comparison between Piedmont and State.

There is no substantial evidence of record that Piedmont's key personnel are familiar with operating conditions on the routes to be operated. In fact, evidence of record casts considerable doubt as to whether Piedmont's key personnel are thoroughly familiar with operating conditions over the routes for which they applied, and the balance of a few more mechanics in Piedmont's employ cannot over-balance the organization of State.

Piedmont, typical of its entire case, made the astounding assertion that a 100 per cent load factor would be achieved. This prognostication, without further consideration, should have eliminated Piedmont, as it shows complete ignorance of scheduled air transportation. There are several important findings of the Board that are not supported by substantial evidence. The Board's opinion is not consistent in its selection of Piedmont over State vis a vis the Board treatment of other feeder applicants in this case.

State alleges that the Board's selection of Piedmont over State is not supported by substantial evidence. State further alleges that the finding that the public convenience and necessity require that a temporary certificate of public convenience and necessity should be issued to Piedmont is not supported by substantial evidence of record.

State also alleges that the finding at page 83, paragraph numbered "12", that Piedmont is fit, willing and able to perform properly the air transportation found required is not supported by substantial evidence of record.

If this decision is allowed to stand it will serve not only to demoralize veteran organizations and other new applicants, but to confuse the industry generally. It will be an embarrassing precedent for years to come.

It is unthinkable that the Board could have been familiar with the evidence of record and still have made the decision it did. For that reason, State Airlines, Inc. has filed this petition for reconsideration, urging the Board to correct its erroneous decision.

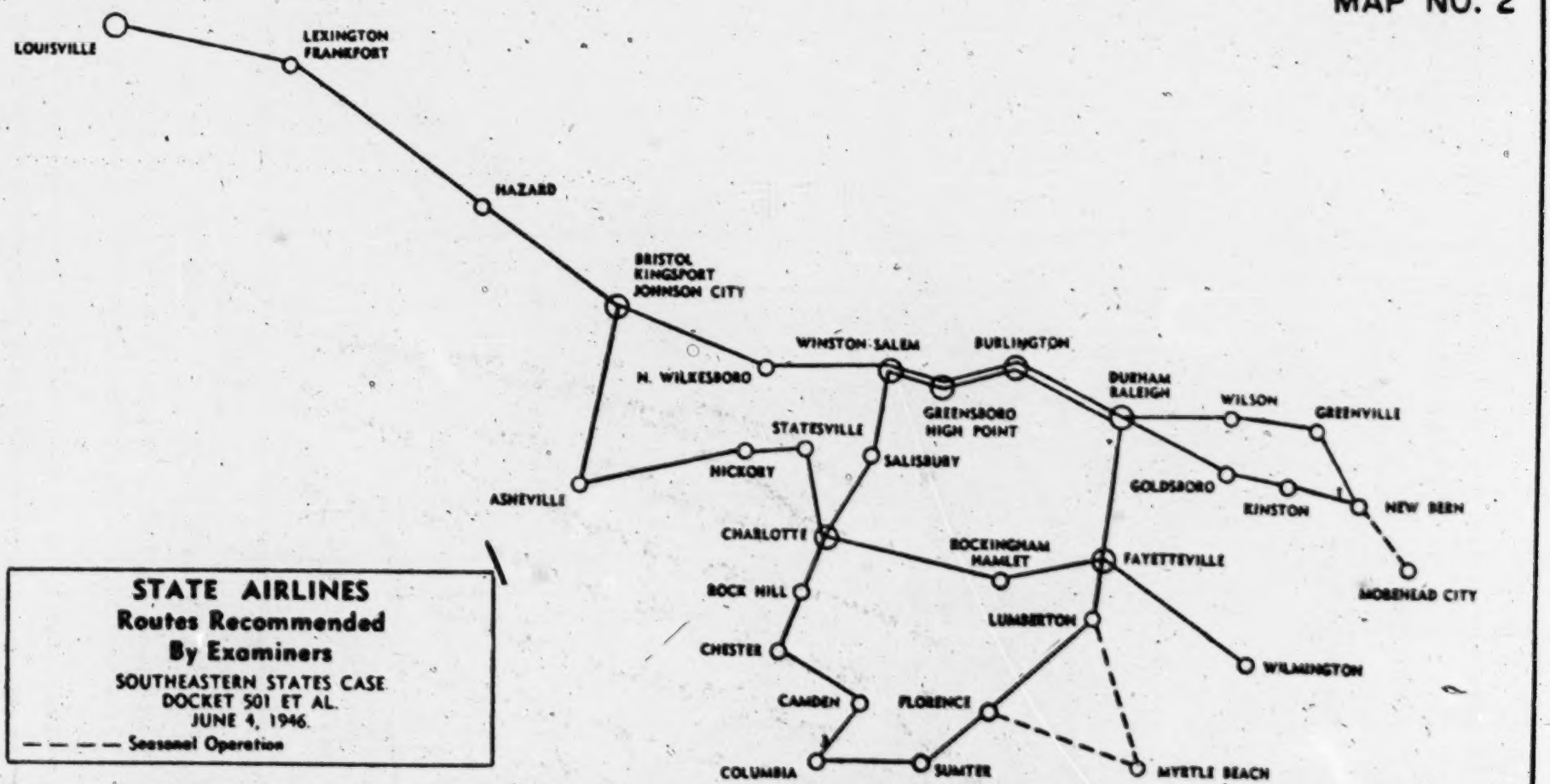
MAP NO. 1

MORGANTOWN
CLARKSBURG
ELKINS
WASHINGTON
CINCINNATI COVINGTON
PORTSMOUTH
HUNTINGTON
MAYSVILLE
ASHLAND
CHARLESTON DUNBAR
LOUISVILLE
LEXINGTON FRANKFORT
CHARLOTTESVILLE
COVINGTON CLIFTON FORGE
RICHMOND
BECKLEY
WILLIAMSON
DANVILLE
PIKEVILLE
WELCH
PRINCETON BLUEFIELD
ROANOKE
LYNCHBURG
PETERSBURG
NORFOLK
SOMERSET
HAZARD
LONDON CORBIN
BRISTOL KINGSPORT JOHNSON CITY
MARTINSVILLE
DANVILLE
ELIZABETH CITY
HARLAN
MIDDLESBORO
REIDSVILLE
WINSTON-SALEM
BURLINGTON
N. WILKESBORO
DURHAM RALEIGH
WILSON
GREENSBORO HIGH POINT
KNOXVILLE
STATESVILLE
HICKORY
SALISBURY
GREENVILLE
ASHEVILLE
S. PINES PINEHURST ABERDEEN
GOLDSBORO
KINSTON
NEW BERN
SHELBY
GASTONIA
CHARLOTTE
FAYETTEVILLE
CHATTANOOGA
SPARTANBURG
GREENVILLE
ROCK HILL
ROCKINGHAM HAMLET
MOREHEAD CITY
CHESTER
LUMBERTON
ANDERSON
CAMDEN
WILMINGTON
GREENWOOD
FLORENCE
COLUMBIA
SUMTER
MYRTLE BEACH
AUGUSTA
ORANGEBURG
MILLEDGEVILLE
CHARLESTON
MACON
DUBLIN
STATESBORO
COLUMBUS
MONTGOMERY
SAVANNAH
WAYCROSS
BRUNSWICK
JACKSONVILLE

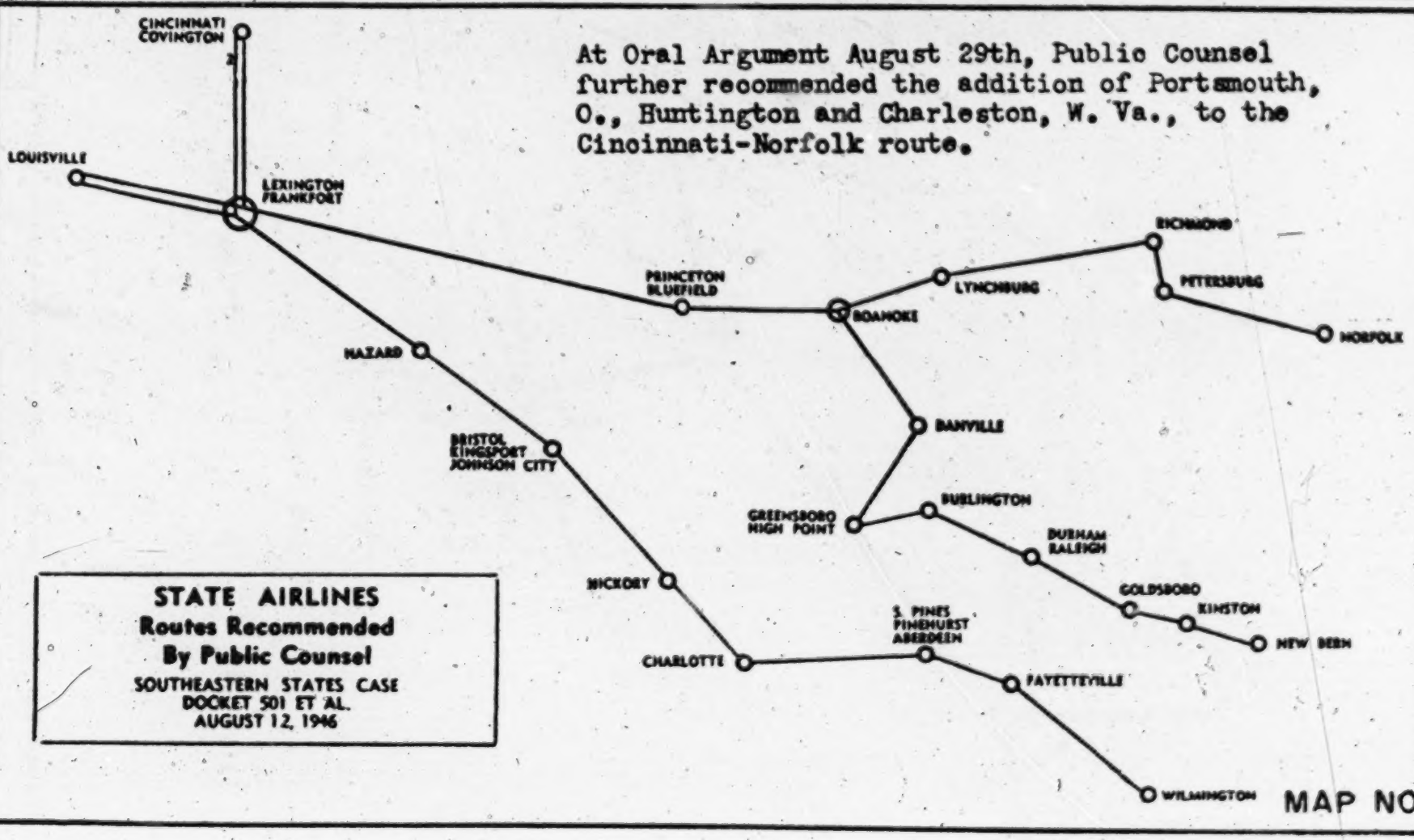
STATE AIRLINES
Proposed Routes
SHOWING EACH ROUTE SEPARATED AND NUMBERED AND INCLUDING ADJACENT CITIES
DOCKETS 1711, 1776
AUGUST 28, 1946

Dotted line — alternate or additional

MAP NO. 2

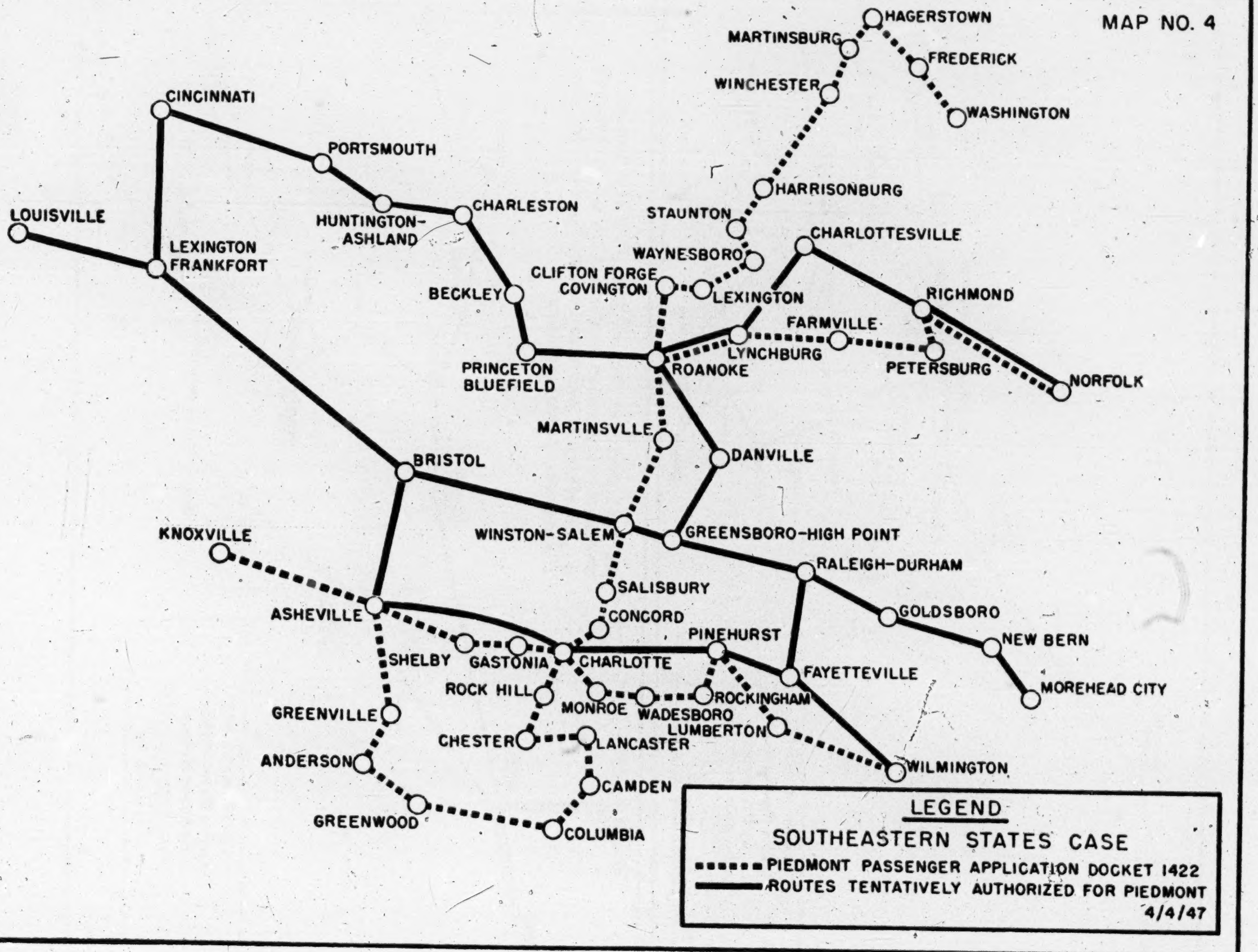


At Oral Argument August 29th, Public Counsel further recommended the addition of Portsmouth, O., Huntington and Charleston, W. Va., to the Cincinnati-Norfolk route.



MAP NO. 3

MAP NO. 4



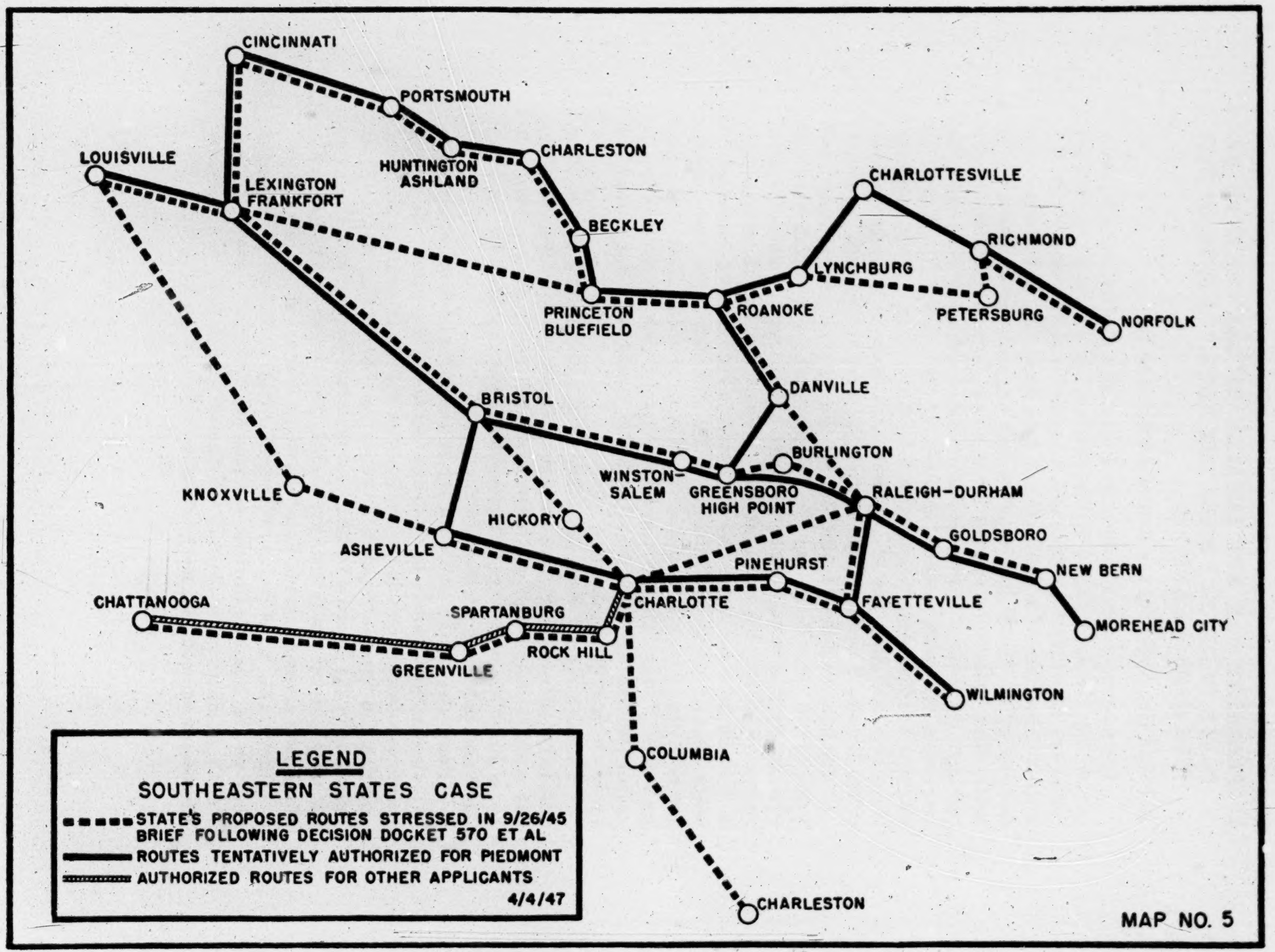
LEGEND

SOUTHEASTERN STATES CASE

PIEDMONT PASSENGER APPLICATION DOCKET 1422

ROUTES TENTATIVELY AUTHORIZED FOR PIEDMONT

4/4/47


CINCINNATI
PORTSMOUTH
LOUISVILLE
HUNTINGTON
ASHLAND
CHARLESTON
LEXINGTON
FRANKFORT
CHARLOTTESVILLE
BECKLEY
RICHMOND
LYNCHBURG
PRINCETON
BLUEFIELD
ROANOKE
PETERSBURG
NORFOLK
DANVILLE
BRISTOL
BURLINGTON
WINSTON-
SALEM
GREENSBORO
HIGH POINT
RALEIGH-DURHAM
KNOXVILLE
HICKORY
GOLDSBORO
ASHEVILLE
PINEHURST
NEW BERN
CHATTANOOGA
SPARTANBURG
CHARLOTTE
FAYETTEVILLE
MOREHEAD CITY
ROCK HILL
GREENVILLE
WILMINGTON
COLUMBIA
CHARLESTON
LEGEND
SOUTHEASTERN STATES CASE
STATE'S PROPOSED ROUTES STRESSED IN 9/26/45 BRIEF FOLLOWING DECISION DOCKET 570 ET AL
ROUTES TENTATIVELY AUTHORIZED FOR PIEDMONT
AUTHORIZED ROUTES FOR OTHER APPLICANTS
4/4/47
MAP NO. 5

I. PIEDMONT CAN NOT LEGALLY BE CERTIFICATED BECAUSE IT DID NOT MEET THE REQUIREMENTS OF SECTION 401(b), (c) AND (d).

A. It Did Not Apply for the Routes Awarded to It.

The passenger routes sought by Piedmont's application are shown on the Map No. 4, at page 6 of this petition. It will be noted that the routes are all in the Carolinas and Virginia (and Washington, D. C.) with the exception of a small extension to Knoxville, Tennessee. The decision of the Board has awarded this applicant an estimated 1719 route miles, tentatively making it the *second largest of all the feeder carriers. Of those 1719 route miles, only 536 route miles even vaguely resembles the route system* applied for by Piedmont. Even the Roanoke-Norfolk and Wilmington-Asheville routes, which comprise these 536 route miles, are at considerable variance to the route awards of the Board. *The other 1183 route miles were not applied for at all.*

The Board's order of April 4, 1947, sets up three routes designated (a), (b) and (c). Route (a) has 15 points, only 6 of which were applied for by Piedmont, and those 6 were applied for in connection with routes other than the route awarded. Route (b) has 11 points, only 4 of which were applied for by Piedmont; no terminal or intermediate point west or north of Roanoke on the awarded route was sought. Route (c) has 6 points, only 2 of which were applied for by Piedmont, and those 2 were applied for in connection with entirely different routes than the one awarded. Of the 26 points, only 9 were applied for in any way by Piedmont.

Route (a) is a Y-route and, therefore, virtually two routes. The northerly east-west leg from Cincinnati-Louisville to Morehead City, 644 miles, is comprised of 10 terminal and intermediate points. Of those 10 points only one—Winston-Salem—was applied for by Piedmont and *that on a north-south route.*

Route (a) on the southerly leg of the Y-route from Asheville to Wilmington does include 4 points applied for by Piedmont. But these points were sought only in connection with a different routing proposal, omitting the important point, Fayetteville. As to this Route (a) as described in the Board's Order, as hereinafter pointed out, Piedmont, not only did not apply for, but stated that the Charlotte-Louisville-Cincinnati segment should be operated by Delta. (Page 12, *infra*)

Route (b), the Cincinnati-Norfolk route is 553 miles in length. Only on the Roanoke-Norfolk segment can any resemblance to Piedmont's application be found. Piedmont stated that the Roanoke-Charleston segment did not warrant service. (Page 12, *infra*)

The award to Piedmont was almost the direct antithesis of its application, 17 out of 26 terminal and intermediate points being unapplied for; approximafely 500 route miles being in states in which Piedmont proposed no service at all; nearly 900 route miles (or over half of its route system) being outside and beyond even the general area of its application; two-thirds of its awarded routes not having been applied for; and only a little over 500 route miles which even vaguely resembled the route system sought.

B. Piedmont's Only Application for Cincinnati and Other Routes, Eliminated by Amended Application Prior to the Hearing.

Piedmont never did apply for much of the route mileage awarded it. In its original application, filed June 2, 1944, Piedmont had applied between Winston-Salem and Cincinnati,[1] in some respects similar to the route awarded it through West Virginia and Ohio. But this was in effect withdrawn by the very specific Amendment No. 1, filed by Piedmont on March 10, 1945. This amendment specifically amended sections 3 and 4 of the original application to eliminate the Cincinnati route and various others. In fact, the amendment presented an entirely new and different route proposal.

This is a clear and positive disclaimer of the routes eliminated by that amendment.

C. The Piedmont Application as Well as Evidence of Record Are Insufficient to Support the Route Awards.

No technical legal support for the award can be found in the form of the Piedmont application. Where the proof, testimony *and* the form of the application are limited to certain routes, the application for completely different routes has always been rejected by the Board.

The general clause in paragraph 1 of Piedmont's amended application seeks "such modification of such routes [specifically applied for] as the Board may find public convenience and necessity require."

The term, "modification of such routes", as used in the application must be given its normal and limited meaning. It can not contemplate a vast alteration or extension of the route sought. *Colonial Air et al., Atlantic Seaboard Op.*, 4 C.A.B.—552, 559, 560; *Panagra Terminal Investigation*, 4 C.A.B.—670, 678. It is not a catch-all clause and is similar to the clause in Colonial's application in the *Atlantic Seaboard Case, supra.*

---

[1] State's original application in Docket No. 673 was filed October 21, 1941.

To hold that the "modification of such routes" in North Carolina, South Carolina, Tennessee and Virginia encompasses service in Ohio, Kentucky and West Virginia is to deprive State Airlines of a fair hearing and due process of law.

The amended application contains a "Wherefore" clause with a prayer of limited effect. If the "Wherefore" clause of its original application can be said to have any legal effect, that clause, is too general to constitute notice of an application. A general prayer for "such other and further relief" is traditionally a lawyer's phrase which merely relates to or modifies the specific relief sought. It does not enlarge the application. In 49 Corpus Juris, Section 188, it is stated:

> "The prayer for relief cannot be considered as adding to the allegations of the declaration, complaint or petition, nor can it enlarge the cause of action stated. . . . " (49 Corpus Juris, page 175)

A prayer for general relief does not authorize determination of matters beyond the issues rendered, 49 Corpus Juris 176 and cases cited. See also *State ex rel. White* v. *Douglas*, 107 P. 2nd 593 (Wash.), and *Eberhardt Lumber Co.* v. *Lecuyer*, 110 P. 2nd 757, 153 Kan. 386.

As stated at page 6 of the Board's Opinion in this case, the area comprising this proceeding includes all or part of 14 states. This is nearly one-fourth of the United States. Certainly in this case the words "such other and further relief", or "such modification of such routes" can not constitute notice as required by statute.

D. There is Nothing in Piedmont's Exhibits, Testimony or Other Proof Indicting that Piedmont Was An Applicant for 1183 Passenger Route Miles Awarded.

At the time of the hearing, in regard to any enlargement of Piedmont's proposals, its president stated during cross-examination:

> " . . . I would like to have it understood, here, now, that any point not included on our proposed routes, which are *along our proposed routes and which would not materially upset our plan of operation*, that the Civil Aeronautics Board saw fit for us to serve, we would be delighted to serve it." (R-1922) (Emphasis supplied)

(1) Area or scope of Piedmont's application limited.

The area for which Piedmont was proposing to serve was defined repeatedly both for pick-up and passengers. Witness Brown, Pied-

mont's economic witness, in his initial statement under pick-up (EX-PI-16, p. 1) entitled, "The South Atlantic Trade Area", said:

> "The South Atlantic Trade Area, as the term is used in this analysis, roughly embraces the states of Virginia, North Carolina and South Carolina. . . . The Appalachian Mountain Range forms a rather broad and irregular boundary of the area on the west."

The range lies along the westerly border of Virginia and the easterly border of West Virginia and Tennessee.

On page 6 of the same exhibit, Witness Brown says:

> "For comparison, the following figures for Knoxville, Tennessee, and Charleston, West Virginia, *the closest outside related points, are given.*" (Emphasis supplied)

Witness Brown, at one time, regarding the rail map (EX-PI-52, p. 1), showing outside points, was asked, "Does that have any significance in consideration of Piedmont's proposed passenger service?", and answered, "No, sir; I believe it does not." (R-1845)

The only map which Piedmont submitted showing its passenger routes in relation to existing air routes (EX-PI-49), shows no cities or routes whatever directly west of Roanoke, or directly north of Knoxville.

On page 17 of Piedmont's brief to the Examiners, it was said:

> "There is need for the establishment of a strictly local passenger and airmail pick-up operation within the South Atlantic Region."
>
> "The area for which Piedmont proposes service is the most adaptable to and needs local air transportation more than any *other area* under consideration in this proceeding." (Emphasis supplied)

Likewise, on page 3 of that brief it stated:

> "It should be emphasized, however, that the area for which Piedmont proposes service constitutes only a portion of the area under consideration in this proceeding."

In oral argument (R-682), it was said:

> "What we are proposing is rather modest."

(2) Disclaimer of certain routes awarded.

In respect to routes beyond Piedmont's area of interest, Piedmont's brief to the Examiners stated at pages 6 and 7:

> "While Piedmont's proposed Route 2 does not extend *west of Roanoke to Charleston*, it is felt that this segment would better be served by a trunkline operation, as has been recommended by the Examiner in the Great Lakes-Florida case, and which will undoubtedly be certificated. There does not appear to be sufficient intermediate communities between Roanoke and Charleston at present . . . to justify the certification of two carriers over this segment at the present time." (Emphasis supplied)

In respect to another important route which State has repeatedly urged, Wilmington-Charlotte-Louisville service, and as awarded Piedmont, Piedmont said in brief to the Board, dated July 21, 1946, at page 9:

> "However, a trunk-line service of the type proposed by Delta Air Lines would more adequately take care of Charlotte's through traffic to Louisville, Cincinnati and beyond, rather than . . . State . . . "

Moreover, Piedmont's exceptions to the Examiners Report did not except to lack of recommendation for service west of Roanoke nor to the Examiners' recommendation of a Louisville-Wilmington route for State.

Research fails to reveal any indication in Piedmont's exhibits, testimony, or other proof indicating that even Piedmont considered itself an applicant for routes extending over the Appalachians, in Kentucky, Ohio and West Virginia. In fact, there was disavowel of such routes.

E. Neither Public Counsel Nor the Examiners Considered Piedmont as an Applicant for Any of the Routes Awarded in Kentucky, Ohio or West Virginia.

Public Counsel's brief to the Examiners properly considered Piedmont's application under its section D, "Local Service to North Carolina and Virginia" beginning at page 34. Piedmont's application is considered at page 40 et seq.

The Examiners also considered Piedmont as an applicant only "in the Carolinas and to Washington, D. C., via various intermediate points in Virginia." (Report, Volume I, page 93).

Public Counsel recommended State Airlines for an extensive route system, but did not recommend Piedmont for anything. The Examiners recommended State for extensive routes, and also recommended Piedmont for routes similar to those for which Piedmont had applied, but which were not the routes awarded by the Board.

The Board is governed by the requirements of notice, fair hearing and jurisdiction which have always been fundamental to all American courts and tribunals. In law, in equity, and administrative tribunals there must be pleadings and evidence to support a decision. 49 Corpus Juris Secundum Section 40(b) page 97; 30 Corpus Juris Secundum Section 604, pages 996 and 997. Since the application, testimony, other proof, as well as briefs did not seek the bulk of the routes awarded, the Board is without jurisdiction to grant the routes awarded to Piedmont.

II. PUBLIC INTEREST OVERWHELMINGLY REQUIRES THE SELECTION OF STATE OVER PIEDMONT.

The Board at pages 70 and 71 of the Opinion stated:

> "The choice has thus narrowed down to State Airlines and Piedmont Aviation, and which of these two companies should be selected to conduct the proposed service presents a close and difficult question."

This statement as well as other statements in the Board's opinion imply that both applicants are found to be fit, willing and able. Putting aside for the time being the fact that Piedmont did not apply for most of the routes awarded, there can be no question but that State should be selected over Piedmont on the basis of comparative public interest.

A. Piedmont Did Not Show an Adequate Plan of Operation.

One of the three essential elements of fitness set forth in the oft-quoted, *American Export Case*, 3 CAB 298, is that an applicant must present "a plan for conduct of service made by personnel shown to be competent in such matters." Here there was no plan of operation made by competent personnel either for the route system or of the character of air transport service conditionally and tentatively authorized for Piedmont.

(1) The pattern of routes proposed by Piedmont was almost diametrically opposite to the pattern of routes awarded—On the other hand, the route pattern awarded was applied for 98.5% by State.

None of Piedmont's terminal to terminal proposed routes correspond to those awarded. Piedmont's proposal's only similarity is between Norfolk, Va., and Roanoke, Va., and between Wilmington, N. C., and Asheville, N. C. (See Map No. 4 at page 6 of this petition.) *However, State's proposed route between Norfolk and Cincinnati is identical to the route awarded with one minor exception. The Roanoke-Wilmington route is identical to State's proposals with two minor variations. Similarly all the routes awarded were applied for and stressed by State but not Piedmont.* (See State's proposals as compared with routes awarded on Map No. 5 at page 7 of this petition.)

The Board should have used and still should use, the same logical analysis of Piedmont's proposal as it did in *this very opinion* as to Seaboard Air Transport and Blue Grass Airlines. Although Seaboard Air Transport had applied for as many of the North Carolina points awarded, as Piedmont had (5), it was properly considered by the Board to be disqualified. The Board in the last two sentences on page 68 of its Opinion stated as to Seaboard:

> "This applicant does not propose service to such North Carolina cities as Raleigh, Durham, New Bern, Winston-Salem and Greensboro-High Point. While Seaboard could undoubtedly conduct a satisfactory service over the route which it has proposed, the evidence of record will not support a finding that it is capable of undertaking an operation of the scope and character we have found required."

Of the cities mentioned *Piedmont applied for only one*—Winston-Salem—and then on a north-south route, not east-west as awarded by the Board. *On the other hand State specifically applied for all of those points and on an east-west route as awarded by the Board.*

The Board also properly rejected Blue Grass from consideration, stating at page 66 of its Opinion:

> "The Blue Grass application which is also primarily a local and feeder service proposal, includes a series of routes in Kentucky, Tennessee and Missouri, *none of which correspond to those which we have found should be authorized.*" (Emphasis supplied)

The Board's disposition of the Blue Grass and Seaboard Air Transport proposals was consistent with its well established policy.

In the recent *North Central Case*, Docket No. 415, decided December 19, 1946, the Board dismissed from consideration the application of Midwest Airways. At pages 67 and 68 of that opinion the Board stated:

> "No notice was given to any of the other parties to this proceeding that Midwest might be considered for any routes more extensive than those covered by its application until after the Examiners report was issued. The other parties were thus deprived of an opportunity to submit evidence and to cross-examine as to the qualifications of Midwest to operate the more extensive route system herein contemplated.
>
> "In presenting its case, Midwest stressed only the need for a Marquette-Chicago route. Its plan of operations and all estimates of revenues, expenses and capital expenditures were based on such an operation."

Applicants have uniformly been denied certification where their route pattern proposals were not those found by the Board to be required by the public convenience and necessity.

In the *West Coast case*, Docket No. 250 et al. decided May 22, 1946, the Board at page 66 of its Opinion rejected Los Angeles Airways saying:

> "The application of Los Angeles Airways was limited to establishment of a feeder system radiating out of Los Angeles and did not contemplate service north of Bakersfield and Santa Maria. Although its application contained a clause to the effect that it would accept a certificate authorizing service which might be found by the Board to be required by the public convenience and necessity in the area of its routes or adjacent to its routes, we do not believe that it is sufficiently broad to justify the selection of this carrier to provide the service here found required."

On the contrary, similarity of an applicant's route pattern proposal and plan of operation to the route pattern and air service authority awarded, has logically been held to be an essential element in the selection of carrier to operate the service.

In the *New England case*, Docket No. 399, decided June 13, 1946, the Board in selecting Wiggins Airways for a feeder route system stated conclusions equally applicable to State. At page 22 of the Opinion the Board stated in part:

> "Its proposal for a local air service was as thorough and realistic as was presented by any applicant. Its application for feeder routes in New England was originally filed in April

1940, and with later amendments *approaches closely the local and feeder route system which we have found required by the public convenience and necessity.*" (Emphasis supplied.)

In the *Rocky Mountain case,* Docket No. 152, decided March 28, 1946, the Board in the selection of a feeder carrier *narrowed the field to those applicants who proposed routes similar to those required.* At page 72 the Board said:

> "Six of the applicants propose a route between Salt Lake City and Albuquerque, and *two of these, Ray Wilson, Inc., and Mountain States Aviation, Inc., also propose a Denver local service substantially conforming to that which we have found should be authorized.*" (Emphasis supplied.)

Similarly, in the *West Coast case, supra,* the Board in selection of carrier for the northwest coast area narrowed the field to Southwest and West Coast Airlines because, as stated at page 65:

> "• • • both Southwest and West Coast have comprehensive applications which would embrace the routes which we have found required by the public convenience and necessity."

In the *Latin American Case,* Docket No. 525 et al., even though most of the applicants had general clauses in their application (which Piedmont did not have), the Board nevertheless limited its consideration to five applicants in its selection of carriers for certain routes. (See pages 62-66.)

The great dissimilarity between the routes awarded and Piedmont's application, and the similarity between the routes awarded and State's applications are clearly shown by the following comparative figures:

Awarded mileage (non-duplicating, airport to airport)	1719 mi.
Maximum corresponding overall (terminal to terminal) Piedmont proposed mileage (Roanoke to Norfolk and Asheville to Wilmington)	536 mi., 31.2%
Maximum corresponding overall State proposed mileage (all except New Bern to Morehead City)	1694 mi., 98.5%
Total No. of awarded stops	26
No. of awarded stops included in Piedmont applications	9, 34.6%

No. of awarded stops included in State Applications	24,	92.3%
Total 1940 Urban population awarded (35 cities)	2,177,293	
Total 1940 Urban population of cities common to both Piedmont application and award	720,934,	33.1%
Total 1940 Urban population of cities common to both State applications and award	2,153,198,	98.8%

(2) Piedmont showed no plan of operations—whereas State's proof presented detailed and realistic plans.

The Board, in rejecting Prairie Airlines, at page 62 of its Opinion:

> "The applicant has not presented any plans indicating that it would or could operate a system such as found to be required in this proceeding."

The Board properly rejected South East Airlines at page 67 of the Opinion saying:

> "The evidence presented by South East with respect to the requirements of local service in this area does not reflect the study and planning of details as do the exhibits of some of the other applicants. No showing whatsoever was made for the need of this applicant's proposed service, the effect upon existing air services, or that its operations will show a justifiable expectation of success at a reasonable cost to the government."

These statements apply with equal force to Piedmont. No reason appears for not making similar findings as to Piedmont.

State filed detailed proof of the economic strength and resources of the routes awarded, existing and proposed transportation facilities over the routes, air and first class mail, traffic potential, including studies based on 45 months actual experience by State in the area, complete operating forecasts for the routes awarded, costs, schedules, weather, aviation experience of State's organization, financial fitness, and other complete proof as hereinafter discussed in more detail. Public Counsel's brief to the Examiners (page 45) commended State's proof. Both the Examiners and Public Counsel recommended the award of a certificate to State.

(3) State proved public convenience and necessity for the awarded routes—Piedmont showed no public convenience and necessity proof.

In the *Feeder Investigation* opinion the Board stated in defining an applicant's responsibilities under Section 401(d) (2) of the Act that, "... *it will be incumbent upon each applicant* to meet the test of public convenience and necessity by showing a need for the service, the probable use that will be made of it, the effect on existing air services, and a cost to the Government in mail compensation bearing a reasonable relationship to these elements and to the character and quality of the service proposed." (Emphasis supplied)

It will be shown later that Piedmont did not furnish a single cost estimate for its proposed passenger service that is determinative of what the cost to the Government would be. Obviously, Piedmont has met none of the other tests, any more than did South East Airlines, regarding whom the Board said on Page 67:

> "No showing whatsoever was made for the need of *this* applicant's proposed service, the effect upon existing air services, or that its operations will show a justifiable expectation of success at a reasonable cost to the Government."

Public Counsel's brief to the Examiner, at page 45, states:

> "State has presented an extensive set of exhibits in support of its application, and has shown more intensive interest and research into the possibilities of local feeder service to the Piedmont area than any other applicant in this case."

Similarly the Examiners in their report found that State had "made extensive studies of a. line operations and of the needs of the southeastern area." (Report page 92).

None of these findings were made as to Piedmont, either in the Examiners' report or in the opinion of the Board. Such findings could not be made on the record in this case.

Not including costs, exhibits indicating convenience and necessity for passenger operations by Piedmont (Sections 3B and 4B) were Nos. PI-46 through PI-55, a total of 25 pages. State's exhibits on the same subject were STA-2 through STA-33, STA-67 through STA-71, STA-76 through STA-81, Testimony STA-82 and STA-G, portions of Pages 7 through 13, or approximately 214 pages. Piedmont's exhibits to show *pick-up* need were Nos. PI-13 through PI-24A, a total of 51 pages.

The following is a partial list of State exhibits proving convenience and necessity over the routes awarded and which were not (except as noted below) included in Piedmont's exhibits.

Cities—population growth by region and routes and classification on a 25 mile radius basis. (EX-STA-3, 4, 5)

Economic Characteristics of cities by region, routes and nationally for those having air service in 1939. (EX-STA-6, 7, 8)

States—growth by region and economic characteristics. Manufacturing growth comparisons of areas with Middle Atlantic states. (EX-STA-9, 10, 11)

Time, fare and mileage savings of proposed routes, by region, by route over existing transportation. (EX-STA-12, 13, 14, 15)

Exhibits on comparative air fares, nearest air service to new points, lack of rail transportation, air and first class mail statistics. (EX-STA-16, 17, 18, 19, 20, 21)

Traffic estimates based on 1,639,664 charter passenger mile trips, requests and inquiries over 45 months, rail-air comparisons, shorthaul—schedule—mileage effect and prior air traffic experience by area, cities and economic characteristics. (EX-STA-22 through 33)

Topographical map of entire area to be served. (EX-STA-69)

Diversion, integration, airport facility and hotel registration and similar data in terms of State applications. (EX-STA-76 through STA-81)

Piedmont did furnish a highway flow chart (EX-PI-51, p. 2) which was illegible and did not show intermediate points and which was conceded as not representing potential air traffic, "Very short movements by automobile certainly would not be transferred to airplanes." (R-1845), and also a table on the popularity of National Parks (EX-PI-54) which was passed without comment (R-1831). The number of bus and rail schedules and a limited listing of 1933 rail traffic, EX-PI-52 and 53, were included in State exhibits STA-13 and STA-76, together with much more information.

The only data presented by Piedmont with respect to need was a few 1933 rail figures, not over the routes awarded, which the witness admitted were "not conclusive" (R-1836). Their obvious inaccuracy is shown by comparison with hotel registrations which Piedmont ignored.

For example, the witness stated, ". . . Winston-Salem has more traffic with Roanoke . . ., than does Greensboro" (R-1837).

For these points:

	1933 Rail	Hotel Registrations at Roanoke	
Winston-Salem-Roanoke	1608	Winston-Salem	278
Greensboro-Roanoke	204	Greensboro	314
	(EX-STA-76, p. 2)		(EX-STA-81, p. 14)

While Piedmont had flown charter trips the mileage for which was given in the Board's opinion on Page 72 (*being substantially less than State's yearly average of over 78,000 miles*), Piedmont's President said that with exceptions (unnamed) they "do not feel that a basis can be arrived at for determining the number of passengers or the needs of a community by their use of charter operations . . ." (R-1876). It is evident the average charter operator seeks only longhaul business so that such trips would not prove a shorthaul need, and this applies to Piedmont. State's extensive record in Exhibit STA-22 is proof to the contrary. If a man charters a plane for himself or his family (R-1916) to go to a particular destination, it would seem that would be proof, unless he were demented, that he wanted to go there. State's charter trip record, on the other hand, factually shows trips made to connect with scheduled airlines.

Safety and *Speed* were overlooked in Piedmont's proof.

In respect to speed, while Piedmont showed no time savings for its proposals, it proposed stops averaging 36 miles apart (EX-PI-49), the lowest of any new applicant in this proceeding. State's proposed stops average 69.5 miles apart, whereas on the routes awarded, the average (corresponding to State's for these particular routes) was 63.9 miles apart. Moreover, for short distances Piedmont showed a faster speed for the Norseman than DC3 speeds. For example, for 32 miles between Anderson and Greenville, it showed 16 minutes (EX-PI-47, p. 4, R-1883-4), whereas Delta between Fort Worth and Dallas, 30 miles, takes 18 minutes (Official Aviation Guide, July 1945).

There was an utter lack of coordination between Piedmont's witnesses in other respects.[2]

[2] Its economic witness thought Greensboro, N. C., was on the routes (Record 1837), whereas it was not even included in the traffic estimates he had supposedly prepared (Ex-PI-55, P. 1, 2), let alone on the maps. Again Witness Brown's traffic estimate was based, he said, on a passenger's traveling half the length of the route (R. 1849). However, Piedmont's President, when asked if he expected any traffic between Charlotte and Columbia (86 miles) at a higher fare than another carrier operating there (which there is) answered, "If there is another carrier there, no, sir. We are not banking upon terminal to terminal traffic, to any extent." (R. 1913)

Obviously, the entire character and purpose of Piedmont's application was principally devoted to its pick-up proposal. The major part of Piedmont's exhibits were directed to its pick-up proposal.

As contrasted to State's proposed instrument operations, the day contact (EX-PI-50) operation which Piedmont planned would be little value to the Postal service as pointed out at page 42 in the *New England Case*, Docket 399 et al., decided June 13, 1946 when in denying All American the Board said, "...the greatest transportation need of the postal service is ... some time after five o'clock in the afternoon ...", and as Member Young pointed out in his dissent on this decision, Page 5, "... it is the long-established practice of the Post Office Department to expedite the mail by moving it at night whenever practicable ..."

In fact, Piedmont said there was no need, or that if there was a need, certain of the routes it was awarded, should be given to a trunk airline. (See page 12 of this petition)

No showing whatever was made that Piedmont's proposed air service would save any time (or be a convenience) over *any* form of transportation, or what effect, if any, its proposal would have on existing air services, as shown by State in its diversion exhibits, STA-76, STA-77, and STA-78.

There has been a complete failure of proof of public convenience and necessity by Piedmont.

(4) Costs—State showed costs applicable to routes awarded—Piedmont showed no costs for type of operation found required.

The Civil Aeronautics Act of 1938, as amended, requires the Board to consider the costs of air transportation.

> Section 2(b): "... and foster *sound economic* conditions in ...." (Emphasis supplied)
>
> Section 2(e): "... The promotion of adequate, *economical and efficient* service by air carriers ...." (Emphasis supplied)

The President did not expect traffic going 86 miles, but the economist figures 295 miles, half of the proposed Columbia-Washington route length. Piedmont's economist "separately figured" (R. 1852) pick-up and passenger route traffic because he didn't "assume both would be operated" (R. 1854). Piedmont's President, however, in respect to these two operations said, "I think it will work along very well together." (R. 1907) No doubt the 75 mile distance separating the Economist and President (R. 1848) was an insuperable barrier. Equally confused, though a neighbor of the President's was Piedmont's attorney, who in his brief to the Examiner, Page 9, took Captain Rickenbacker seriously to task for proposing two types of aircraft, "... he would probably ... wind up with two separate and distinct overhaul shops." Whereas Piedmont, itself, had proposed two types of aircraft, Stinsons for their pick-up and Norsemen for their passengers.

In service to the *Rocky Mountain States Area*, Docket No. 152, the Board declared:

> "The statutory duty of this Board to promote and develop air transportation must be construed in harmony with its statutory obligation to regulate air transportation in such manner as . . . *to foster sound economic conditions in the industry* . . . Safeguards . . . will be the issuance of certificates *for only such operations as show a justifiable expectation of success at a reasonable cost to the Government* . . . economy of operation must be a primary concern . . . . The foregoing considerations relate to . . . services utilizing *conventional* types of aircraft." (Pp. 65-67, Mimeographed) (Emphasis supplied)

In another opinion the Board also stated as to one applicant:

> ". . . applicant's plans . . . are so vague and are so completely *unsupported by evidence* as to the cost of such service that we are unable to find applicant presently fit, willing and able to render service . . . or to evaluate the public convenience for such service." *Amarillo-Oklahoma City Operation*, 2 C. A. B. 250, 254. (Emphasis supplied)

The above decisions show that in the past the Board has exercised great care that operating costs will not be reflected in ascending mail pay spirals. Only recently the Board issued orders (Dockets Nos. 2862, 2883, 2852, 2853) against Chicago and Southern Air Lines, Inc., Pennsylvania Central Airlines Corp., Colonial Airlines, Inc., and Northeast Airlines, Inc., to include submission within 30 days of various material including:

> "a detailed estimate of expenses by types of expenses with full explanation of the methods and bases used," "a full statement of frequencies to be flown, the numbers and types of aircraft to be used, by route segments, the estimated utilization of equipment and crews, and any other pertinent operating factors", and "a complete forecast of all financial requirements." (Underlining supplied)

The Board issued a separate investigation order against Chicago & Southern Air Lines, Inc., Docket No. 2834, towards possible suspension of its South American routes in view of higher operating than estimated costs.

In this proceeding, the Board has awarded routes to Piedmont with no showing whatever of necessarily a single applicable cost figure in Piedmont's entire financial and cost estimates, which were based on

the use of single-engine aircraft,[3] (EX-PI-50 "All financial figures and schedules in the following exhibits are based on the performance of the Noorduyn Norseman V") which the Board stated in the Feeder Opinion, issued nearly a year prior to the hearing would be and, in fact, in this instance (the aircraft not having been used in scheduled air transportation) are totally unusable for scheduled passenger transportation (nor undoubtedly would have been permitted to operate across the highest mountains east of the Rockies).

Feeder Investigation, Docket No. 857, decided July 11, 1944, page 7 stated:

> "The material relating to safety regulations submitted in the course of the investigation was of a general nature and was directed for the most part to the feasibility of a combination passenger and pick-up service . . . We find nothing in the testimony to indicate the present desirability of relaxing the existing air carrier safety rules . . . ."[1]
>
> "[1] The present Civil Air Regulations permit the issuance of an air carrier operating certificate by the administrator for passenger carrying operations with single-engine aircraft and with a single pilot under certain specified conditions. These include a limitation of operations to daylight hours and under contact conditions and to routes which, in the opinion of the administrator, have suitable landing terrain. Thus, although there is some latitude for conducting operations in this manner, the opportunities are somewhat restricted. Actually, there have been no such certificates issued. Furthermore, this type of operation will not be possible when the transport category requirements of Part 04 and section 61.712 of the C. A. R. become fully applicable. After December 31, 1944, air carrier aircraft must meet these requirements unless they had been used in scheduled transportation prior to that date with the approval of the Administrator. After December 31, 1947, all air carrier aircraft must meet these requirements . . ."

With costs predicated on an operation that the Board itself cannot permit, obviously there is no showing "of success at a reasonable" or any other "cost to the Government".

If this Decision stands, the entire philosophy of proof of convenience and necessity, which the Board has established since its inception, is discredited. It is also impossible to reconcile award of these vital new routes, that State has striven towards establishing over a period of seven years, in case after case, on the basis of no applicable cost showing whatever, and at almost the same moment give thirty days no-

[3] Such aircraft may be conventional for private flying but are not conventional for scheduled passenger service in the United States.

tice to long established trunklines to justify their existence on an infinitely detailed basis, because their costs appear unreasonable or do not meet estimates, requiring a showing of "frequencies," "the numbers and types of aircraft", "by route segments", and "the estimated utilization."

Not a *single one* of these requirements can be estimated from any data that Piedmont offered. The routes, the character of operation and the aircraft must be totally different from anything Piedmont contemplated.

On the other hand, State presented the most detailed cost estimates of any applicant in this proceeding, and did so for the *particular* routes that were awarded and with the type of aircraft that must be used. These costs are summarized in EX-STA-33 (from Exhibits STA-33 through 56) to show relative costs for any combined number of routes, with and without stewards, for three and five year depreciation rates, and as between DC3's and Lodestars. State's brief to the Examiners, Pages 53 to 60 furnishes a thorough review of these costs.

While investigating certificated carriers' costs to the last penny, the Board cannot afford to ignore the realities of airline operation in awarding routes in contradiction to nearly every statutory obligation and thus shatter the public's confidence in the Board.

While no cost estimate given by Piedmont is of any value whatever in estimating what actual operating costs would be, it should be noted that even Piedmont's estimated single-engine costs are unsound.

For example, assuming that a certificate might be awarded Piedmont, there must necessarily be provision for the expense of setting up procedures and handling many negotiations prior to actual commencement of scheduled operations.

For this purpose, Piedmont has not actually allowed one cent. Piedmont's Exhibit PI-72 shows presumably an allowance of $17,000 for initial development. However, Exhibit PI-81 shows that actually the cost of their case had already amounted to $17,888.00 at the time of the hearing, leaving a deficit. Furthermore, the theoretical $17,000 figure only included one pre-operating development expense item (Ex-PI-59) which was for Familiarization Flights for 13 pilots.

Thus none of the 13 copilots would receive any training whatever before immediately being allowed to fly passengers. There was no provision for training other personnel, setting up operations and traffic manuals, arranging for offices, negotiating airport landing privileges, or the other thousand and one items that must be done before a single revenue passenger can be carried.

State's allowance for initial development expense was $100,000, Page 2, Ex-STA-38.

Piedmont stated (Ex-PI-50), "The principal theme of Piedmont's case is economy of operation." However, the only possible economy would be to the passenger who would only have to pay 5.5 cents per mile fare, whereas for every mile he rode the Government would pay Piedmont an additional 3.6 cents per mile, provided Piedmont operated at 100 per cent load factor, which no airline has ever done! (Page 3, Ex-PI-55, passenger revenue and fare; Page 1, Ex-PI-60 property revenue and expenses.)

As shown in State's exhibit, STA-33, Page 4, depending on the route combination, for the same five-year depreciation rate (the only rate given by Piedmont, although the Feeder Opinion said a "period such as three years" was contemplated) as Piedmont used, the estimated maximum cost to the Government with twin-engine operation would be 1 cent per passenger mile, and the minimum, at no cost, .1 cent gross profit to State.

Typically, Piedmont's President replied to the question (R. 1903):

> "Would you accept a certificate for the passenger service alone?"

as follows:

> "Yes, sir. *At the mail pay we request*, if it's operated exclusively." (Emphasis supplied)

State believes that, whereas one applicant may be given a free ride on another's showing of economic characteristics and community of interest data, that applicant, in this case, Piedmont, cannot be credited with the other's, namely, State's costs or time savings, which are a fundamental part of proof of convenience and necessity, as the Board has stated over and over again, and which are based on a thorough study of airline requirements that Piedmont had only dreamed about (R-1863), and that only State by its own untiring efforts since 1939 (Ex.-STA-60) possessed.

(5) Promotion of air commerce by Piedmont extremely improbable.

(a) Piedmont Not Only Lacked Interest But Disclaimed Much of Service Awarded It.

Section 2(e) of the Act directs

> "The regulation of air commerce in such manner as to *promote its development.*"

The George Resolution, Senate Res. 228, 1942 read in part:

> "Resolved that the Civil Aeronautics Board be requested, if not inconsistent with the public interest to report . . . what steps the Board contemplates taking to see to it that the air transportation industry is able to and will develop in the future at the maximum possible rate."

This resolution was emphatic proof of national interest in the development of air transportation. Its accomplishment was recognized by the Board in the Latin American Case, *Additional Service to Latin America*, Docket 525 et al., decided May 17, 1946:

> "In addition it is significant that although an applicant for routes in South America via West Coast points, Western filed no exceptions to the recommendation of the examiners that applications for additional routes in South America be denied. Braniff, on the other hand, on exception, brief, and in oral argument protested vigorously against this recommendation and argued the need for service which would compete with Panagra. It is, of course, of the utmost importance in authorizing additional service to South America that the task be entrusted to a strong carrier keenly interested in the establishment of and capable of achieving the maximum development of the area to be served." (Page 64 Mimeographed)

Nevertheless, the Board has awarded Piedmont an important route between Norfolk and Cincinnati for which it did not apply, which includes the important cities of Bluefield, W. Va., and Beckley, W. Va., (as applied for by State) between Roanoke and Charleston, and regarding which in its Brief to the Examiners, it said on Pages 6 and 7:

> "While Piedmont's proposed Route 2 does not extend west of Roanoke to Charleston, *it is felt that this segment would better be served by a trunkline operation*, as has been recommended by the Examiner in the *Great Lakes-Florida* case, and which will undoubtedly be certificated. There does not appear to be sufficient intermediate communities between Roanoke and Charleston at present, nor sufficient local traffic between the two points to justify the certification of two carriers over this segment at the present time." (Emphasis supplied)

It is of incidental interest that the route predicted by Piedmont as apt to be certificated, had been certificated nearly a month before Piedmont's Brief appeared.

The same thought was repeated again by Piedmont in its Brief to the Board nearly a year later, July 21, 1946, Pages 6 and 7:

> "There is nothing in the record to support the finding that now there is need for still another carrier between Roanoke and Charleston, particularly since there are not now sufficient intermediate points to warrant the inauguration of a local service between these two points."

Try as hard as it might, even to the extreme of ignoring the considerable data placed in the record by State on the needs of the two intermediate cities between Roanoke and Charleston (State Briefs of September 26, 1945, Pages 18-19; and August 12, 1946, Pages 16-17), Piedmont was unable to prevent the Board from authorizing it to serve Bluefield and Beckley, as well as all cities between Norfolk and Cincinnati. It is impossible to understand how such an authorization will develop air traffic. If Piedmont never produced a *single passenger* from either point, the Board could scarcely blame Piedmont.

In a more recent decision (*Pioneer Airlines, Inc.*, Docket 2057, decided November 14, 1946, Page 7) the Board said:

> "It is, of course, of the utmost importance that carriers certificated on a temporary basis to provide local feeder service exert their full efforts to the development of the short-haul potentialities of their routes. This necessarily means that these carriers cannot expect to engage in trunkline service."

The above represents a sound interpretation of the Feeder program. However, regardless of this policy, Wilmington, N. C.-Louisville, a route which formed an integral part of State's closely-knit local service plan (Ex-STA-G, Page 10), and as only applied for by State, was awarded Piedmont following its repeated characterization on brief and in oral argument in the following terms:

> "However, a trunk-line service of the type proposed by Delta Air Lines would more adequately take care of Charlotte's through traffic to Louisville, Cincinnati and beyond, rather than the trunk-line in disguise as a feeder line proposed by State between Charlotte and Louisville." (Piedmont's Brief to Board, July 21, 1946, Page 9)

and in oral argument before the Board (R-249):

> "State has been recommended for another exceedingly desirable east-west route, characterized by some as a trunk line route. I characterize it as such." "It starts out at Louisville, Ky., goes to the Tri-Cities at Bristol, and then east-west through the very heart of North Carolina, Winston-Salem, Greensboro, Burlington, Raleigh, and to the port of

Morehead City." (None of which except Winston-Salem were applied for on any passenger route by Piedmont.)

Thus, Piedmont is awarded a route for which it not only did not apply, but which it described as foreign to the nature of its proposed service and urged that it be given another carrier. Hardly a more contradictory award to the policy of the Act could be made, or less enthusiastic development be expected.

In the even more recent *North Central Case*, Docket No. 415 et al., decided December 19, 1946, Page 50, the Board said in denying an applicant:

> "Another point of interest in this early case (citing *Duluth-Twin Cities Operation*, 1 CAA 573, 576) was that the service proposed was by an existing carrier whose lack of enthusiasm as to traffic potentialities of the route was demonstrated by its failure to except to an unfavorable examiner's report. . . ."

In this instance, Piedmont, in its exceptions, did not except to the Examiners' recommendation of a Wilmington-Louisville route for State, nor did it except to lack of recommendation for itself for service between Roanoke and Cincinnati, both of which, as well as other routes for which it did not apply, it was awarded. It excepted to a lack of recommendation for a route between Wilmington and Knoxville, but *not* as it had applied, omitting, for example, Pinehurst, for which it had originally applied, and later was awarded, as well as three other North Carolina towns in which it had formerly said desperately needed its brand of local service.

(b) 100% Load Factor Anticipated by Piedmont.

Piedmont's particular type of local service, which on one of its routes would result in a 100 per cent load factor (EX-PI-55, p. 3), engendered perhaps by its Advertising and Publicity budget of $5.34 per station, per month (EX-PI-46, PI-67, p. 1), as compared with State's of $195.75 per station, per month (EX-STA-44 and STA-49), was revealed by the following statements by Piedmont's President:

> "... So we might assume that with our estimate of a load factor of 100% that would be a pretty good run with the schedules that we have proposed."
>
> "Q. Isn't it a fact that that would result in either inadequate service to the public, or showing that you have overestimated your potential passenger service? (R-1880)
>
> "A. That is right. It would indicate that our proposal is not more than what we feel, or what will be profitable. In other words, conservative operation." (R-1880-1)

"Q. You propose to use an aircraft that has a seating capacity of six, for the passengers, and you stated this morning that you realized that was inadequate to render the best service for the public and that you did not deem it necessary at the present time to put on additional schedules."

"A. Those are your words. I said that those figures, those estimates are more than we could carry in the airplane, but what we will find under actual operating conditions may be less, maybe more than we expect, and, with that in mind, I think our operational expense estimates are very conservative." (R-1905-6)

"Q. Well, you, then, don't anticipate realizing the load factors that you have used in estimating your expenses?"

"A. Yes, sir, we anticipate that."

"Q. If you do that, that means you will be carrying capacity loads, is that correct?"

"A. Yes, sir. That's the only way we want to operate." (R-1906)

It is almost needless to say that the highest load factor for any certificated domestic airline in 1945 was 93.41 per cent for United Air Lines, Inc., and in 1946 was 84.31 per cent for the same company, and probably never has any airline averaged 100 per cent load factor during a year on any route.

A scarcely less retrogressive attitude towards the development of air transportation can be imagined. It is inconceivable that the Board was aware of these facts in awarding State's proposed routes to Piedmont. From the above, the only possible conclusion is that issuance of a certificate to Piedmont would be entirely contrary to the Act, the Board's policies and contrary to the public interest, when admittedly a totally inadequate service would be rendered the public at the public's expense.

(6) Time savings on routes and service awarded—State supplied complete proof—Piedmont showed none.

The Declaration of Policy of the Act requires the Board to "preserve the inherent advantages of" air transportation. (Section 2(b)).

Obviously this refers, at least in part, to the inherent advantage of speed and savings in time in comparison with existing surface transportation. Piedmont's proof showed neither.

In the *Rocky Mountain Case*, Docket No. 152— *Service in the Rocky Mountain Area*, decided March 28, 1946, Page 66, the Board said:

> "In determining whether the public convenience and necessity require a proposed local feeder service, the Board will consider, among other things . . . the question of whether the communities involved will benefit by *substantial improvement over the existing surface transportation facilities.* Considerations . . . include . . . the time presently required to travel the distance by existing surface transportation as compared with the estimated time required for accomplishing the trip by air including the travel time to and from the airports to be used by the service;" (Emphasis supplied)

Piedmont had no exhibits on these subjects, whereas State did. (EX-STA-12 and 13). State also included in this case the most complete airport data exhibit of any applicant (Ex-STA-80). Piedmont had none. State's proof took into consideration the factor of travel time to and from airports (EX-STA-G, p. 3).

Also, in this proceeding, State was the only applicant to propose a definite remedy for lowering airport transportation costs, which it did in Exhibit STA-80 by expressing its intention of developing cooperative low cost contract car service with popular type automobiles.

As shown at page 23 of this petition, it will be impossible for Piedmont to operate the planes on which their proposal and schedules were based. Consequently, it is only an assumption that Piedmont would be able to show the time savings which State has enumerated. There is no evidence that Piedmont would operate the same type of aircraft. In fact, Piedmont criticized State's choice of the DC3 (p. 252 oral argument).

There is no evidence as to what type of aircraft Piedmont would use (since single engine planes cannot be used) and no evidence as to what time savings would be achieved by Piedmont's operating these routes. Furthermore, there is not one word in the record that Piedmont would have the operations personnel capable of operating multi-engine equipment in scheduled airline service. Piedmont had no witness who had ever had scheduled airline experience, no definite plans of ever getting any.

In the Board's opinion the only statistics given on savings in time of air transportation over ground transportation were set forth on page 55. The figures shown on that page, with one exception which appears to be erroneous and cannot be substantiated from stipulated sources, *are from State's exhibits as solely supplied by State in toto.* The portion of page 55 is quoted as follows, showing the State exhibit numbers from which the figure is obtained.

The single figure which appears erroneous and not taken from State's exhibits is the first one—16 hours for the rail time "from Cincinnati to Raleigh."

> "These exhibits show the rail time from Cincinnati to Raleigh to be 16 hours as compared with proposed air time of approximately 4 hours. Between Louisville and Wilmington the best rail time is 36 hours 45 minutes (EX-STA-12, p. 6), and the best bus time is 33 hours 25 minutes (EX-STA-12, p. 6). Air time of 4 hours 39 minutes (EX-STA-12, p. 6) has been proposed. Not only is the service from the Piedmont area to Louisville and Cincinnati slow and circuitous, but service within the Piedmont itself is inadequate. To illustrate, between Charlotte and Asheville the best rail time is 5 hours 10 minutes (EX-STA-12, p. 2), and the best bus time is 4 hours 25 minutes (EX-STA-12, p. 2); between Wilmington and Greensboro the best rail time is 10 hours 40 minutes (EX-STA-12, p. 4), and the best bus time is 6 hours 35 minutes (EX-STA-12, p. 4). Proposed air time between Charlotte and Asheville is 38 minutes (EX-STA-12, p. 2), and between Wilmington and Greensboro 1 hour 52 minutes (EX-STA-12, p. 4)."

It is almost needless to repeat here the many examples of Piedmont's theory or concept of local air transportation as regarding the number of points on a route that should be served without showing that as much as *one minute* would be saved over any other form of transportation.

B. Safety Aspects of State and Piedmont Proposals.

The Declaration of Policy of the Act requires that the Board—

> Section 2(b) "...assure the highest degree of safety in..."; also section 2(e) "... as to best promote its...safety"; also section 601(b) "...the Authority shall give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety...."
>
> "Among the statutory objectives enumerated as being in the public interest is the regulation of air transportation in such a manner as to insure the highest degree of safety and efficiency..." (Section 2(b); *Western A. L. Acquisition of Inland A. L.*, 4 C. A. B. 654, 661)

The emphasis in the Declaration of Policy and other sections of the Act leave no vestige of doubt that Congress intended scheduled air transportation to be SAFE, and that any other course would be absolutely contrary to the public interest.

The Board has declared:

> "... The fact that an application for a certificate of convenience and necessity relates to a type of operation *not only untried* but *incompletely planned* cannot be disregarded in considering the requirements of the public interest with respect to the disposition of the application." (*All American Aviation, Inc., Pick-up and Delivery Service*, 2 C. A. B. 133, 152)

Yet here Piedmont is found qualified in 1947 for an award not on the basis of a *hypothetical* operation but one which *has been tried* and condemned by the Board itself, approximately three years ago. (See page 23 of this petition)

Piedmont's proposal for *scheduled airline passenger transportation* is in complete *disregard* for:

1. Safety relating to aircraft.
2. Safety relating to airports.
3. Safety relating to navigation aids.
4. Safety relating to weather.
5. Safety relating to personnel.

1. Safety relating to aircraft.

Regarding its selection of single engine aircraft Piedmont in its Exhibit PI-50 says:

> "All financial figures and schedules in the following exhibits are based on the performance of the Noorduyn Norseman V, having a passenger capacity of six and crew of two. While this is not the ideal aircraft for the purpose, *it fulfills more of the requirements than any other known make. It will operate in and out of small fields safely*, and the operations cost, is lower than that of other aircraft designed for local operation. While it is a single engine aircraft, *all schedules are during daylight hours.*" (Emphasis supplied)

After considering every "known make" of aircraft, Piedmont chose a single engine plane of foreign manufacture that had not yet even been approved for ordinary private use, let alone scheduled passenger transportation (R-1901-2).

One basis of selection of this *six-passenger* plane was economy. However, such false economy is in direct contradiction to such authorities as the Presidents of Eastern Air Lines and PCA (R.-882, 1506, 2400) and the Board's requirement in the Feeder Opinion:

> "The capacity of the aircraft to be used should be among the factors entering into the appraisal of justification for a particular new service; for it certainly would be undesirable to approve the establishment of services which were based upon the use of aircraft of such characteristics that their maximum possible commercial revenues would be only a minor part of their operating expenses, making it inevitable that they derive an unduly large proportion of their total revenues from mail pay." (*Local, Feeder and Pickup Investigation*, Docket 852, decided July 11, 1941, page 5)

The other basis of selection was safety on the obvious assumption that a single-engine plane would be safer to fly out of small fields than a twin-engine plane. If the field is small, how can it fail to be more dangerous to go out on one engine than two, or to land where a motor failure on a misjudged approach might be fatal if the only safety factor is *one engine?*

The same reason was again advanced in oral argument (R-254-5):

> "We would rather use two-engine equipment, but if we can't get it, can't get the kind we want, *or if the airports which we serve can't serve the two-engine equipment, and some of them can't, then we propose to use what comes to hand and use it promptly.*"

There is no question that in Piedmont's desperation to get *back* on the Government payroll after cancellation of Government contracts (EX-PI-4), it either doesn't know, or doesn't care about safety.

Piedmont's President also stated while he will use single-engine aircraft, this policy will not be "to the minimum where safety and service performed is neglected." What lesser minimum is there even for private flying? Further, the single-engine pick-up and single-engine passenger operations is to be used to "educate the public in the safety and utility of both types of service." (Piedmont Brief to the Examiners, p. 5). Evidently Piedmont believes the Public is mistaken in thinking twin-engine operation is safer.

In order to further justify the use of single-engine planes, Piedmont's President stated:

> ". . . there is no regulation today to prohibit single-engine operation over the land during day, with day contact operations." (R-1869)

As the Board well knows, there was such a regulation which the Board enacted (see page 7, Feeder Opinion, Docket No. 857 and note thereto), yet Piedmont's President who had been in aviation since

1934 (EX-PI-1) never knew or heard of it and never took the trouble to find out. Yet that is the statement of Piedmont's sole witness with aviation experience—namely, its President. In fact, the Board once justly said:

> "A desire merely to comply technically with the requirements of the regulations does not indicate that type of management which can be relied upon to advance the air transportation industry in the territory." (*Caribbean-Atlantic Airlines, Inc.—Puerto Rican Operations*, 3 C. A. B. 717, 729)

Its President was also the same witness whose research on scheduled operations consisted of flying ". . . into and *over* every point listed . . . *quite a number* of those flights with scheduled operation *in mind.*" (R-1863) (Emphasis supplied)

Piedmont also repeatedly criticised use of the DC3 and State's selection of same.

Piedmont's comment on the Norseman (R-1925) was:

> "Yes, sir. We feel it is a happy medium. I don't believe a local service will ever require—well, I won't say ever, but won't for a long time require an airplane of the size of a DC3."

As the Board knows from its 2780 reports, with two exceptions, DC3's are being used by all operating feederlines today.

As contrasted with Piedmont, State's position on aircraft was:

> "State's proposed use of equipment takes into account availability, reliability and the cost per seat-mile of aircraft . . . State, as previously mentioned, wishes to use the smallest multimotored aircraft that will break even at a reasonable load factor, without the need for mail pay. As depicted in Exhibit STA-57, it looks forward to the development of newer, smaller, and better aircraft than the DC3, but submits that there is insufficient information on aircraft under development to predicate its operations on their use. Furthermore, if State is certificated on a temporary basis for three years, it realizes, in view of its past experience, that any new and untried aircraft might develop such unsatisfactory characteristics in scheduled operations that operations might have to be seriously curtailed, or suspended altogether for a large portion of the three-year period." (EX-STA-G, p. 7)

Furthermore, State's President specifically testified that the safety of twin-engine aircraft is well understood by the public and no academic matter reserved for theorists (R-2347):

"Q. Do you think the element of safety enters into the situation? That is, do you think that the passenger would be satisfied with a single-motored plane?

"A. No, no. We know that.

"Q. What is your opinion in regard to that?

"A. Passengers are sold on the idea of twin-motored operation and we know that there are a number of people that are friends of ours that would like to ride with us but won't because" (on charter service) "we are operating single-motored aircraft."

2. Safety relating to airports.

Piedmont's emphasis that their single-engine plane was adaptable to "operate in and out of small fields safely, ..." (EX-PI-50) has been noted. However, they conceded that some airports were inadequate and hoped that by the time they would be ready to start these "will have grown some" (R-1883). But even though they might grow "some", Piedmont still would prefer for scheduled airline passenger service at Greensboro "...a *little* field close to town, ..." (R-1923). (Emphasis supplied)

This total lack of realization of scheduled air transport airport needs is further shown by the fact that Piedmont's exhibits gave not one item of information on airports. Its only survey, if it could be called such, was thinking about scheduled operations while flying "into or over" these points.

On the other hand, Piedmont criticized State's proposal that the DC3's it proposed (oral argument, R-252) "could not possibly operate at present in many of the airports which it proposes to serve." *This is another instance of Piedmont's ignorance of airport requirements since State's Exhibit STA-80 shows in detail the status of each airport it proposes to serve, and that at the time of the hearing not over 10 of the 55 stops, or 18 per cent, proposed by State had less than 3500 foot hard-surfaced runways, or were Class IV or better.* But Airman's Guide, shows 43 per cent of Piedmont's proposed airports were less than 3000 foot runways. State's Exhibit STA-57 further shows that airport size may only determine the load ability of a particular plane for that airport, and not necessarily the preclusion of all service.

3. Safety relating to navigation aids.

Piedmont made no provision for its own radio aids to aircraft other than three ground stations for its entire system, a barren allowance of $1,000 each for aircraft radios, and no projected use of existing navigation aids. (EX-PI-70, 69, 50)

On the other hand, State provided for a ground radio station at every stop, an adequate allowance of $3,500 for every required aircraft radio apparatus, and for full use of existing navigation aids. (EX-STA-38, STA-P, p. 2, STA-58)

4. Safety relating to weather.

Piedmont made no study of weather conditions even in the area of its own proposed routes, as revealed by the following question addressed to its President (R-1926):

> "Q. Have you actually made an analysis of weather reports based on your proposed schedules to show how many times you couldn't operate and a twin-engine ship could operate in a given time?
>
> "A. No, sir."

Thus, although no study had been made, Piedmont estimated 86 per cent (EX-PI-61) completion of schedules which it had said would be ". . . during daylight hours," (EX-PI-50), whereas actually even the schedules shown could not possibly be maintained on an annual daylight basis from 8:00 a.m. to 6:29 p.m. (EX-PI-47)

But State, as long ago as 1941, had a weather survey made by ". . . Irving P. Krick, head of the Meteorological Department of the California Institute of Technology at Pasadena, California". (R.-2333) *Later, experience with hundreds of thousands of charter flight miles* (EX-STA-22) *showed this survey to be unduly optimistic and proof of actual conditions at the airports was furnished by another survey State made, incorporated in EX-STA-58, the only such survey presented at the hearing.*

This survey was confirmed by PCA's experience in the same area on their route between Norfolk and Knoxville, as stated by Mr. Munro, PCA's President:

> "Q. Incidentally, in view of your experience operating Route 51 do you feel that in order to give dependable service over that route it would be necessary to operate under instrument conditions?
>
> "A. Definitely, yes. That was one of our great handicaps in our previous operation because we weren't allowed to operate after daylight, but that situation has been completely changed. . . ." (R-1481)

State furnished testimony specifically as to weather conditions actually encountered (R-2333-4):

> "Furthermore, ground fogs at points in the mountains and instrument smoke conditions prevail frequently until 10:00 o'clock A.M., or later, at Charlotte during most of the winter" . . . ". . . from State's experience weather observations at specified points are frequently no indication of the weather that has to be traversed between these points. Both Asheville and Knoxville have reported ample contact conditions, yet instrument conditions existed between the two. State during the summer, has had a plane tied up as long as two days at Knoxville for this reason . . ." ". . . any practical plan of operating over its proposed routes must include instrument procedures and ample meteorological personnel. If State uses ultra high radio repeater stations, it may include automatic weather reporting equipment at mountain locations."

Piedmont, however, was totally unaware of the weather problems to be met on scheduled service, having made no study of the subject. Yet in 1945 the Board's own figures show that weather was the second largest single cause of airline accidents.

5. Safety relating to personnel.

As previously pointed out, Piedmont made no showing that it had ever had, had now, or had any definite plans or commitments to have experienced airline personnel in its employ (nor even included familiarization flights for co-pilots (EX-PI-59)), whereas 17 per cent (EX-STA-66) of personnel engaged by State either had been or still were holding executive positions with scheduled airlines. None of Piedmont's witnesses had ever had scheduled airline experience, whereas two of State's witnesses had had such experience in financing and as an employee (R-2416, R-2427).

Throughout Piedmont's exhibits and briefs, there was no particular emphasis on safety, *whereas to State, safety is the number one policy.* In Exhibit STA-G (pp. 1, 13), EX-STA-60 (p. 7), State's brief to the Examiners (p. 72), and in State's brief to the Board (p. 37) thereof:

> "(1) Safety—This is evidenced by our insistence upon instrument operation, ground radio, stewards, and twin-motored planes already approved for airline service, and we might add that State's past safety record shows that the safety of its passengers and personnel has always ranked first with it." (State's brief to the Board, p. 37)

The only possible conclusion is that Piedmont's proposal was for [illegible] entirely different from the Board's standard of scheduled [illegible] transportation, and that the Board members individually, or [illegible] conception of the utter inadequacy of the Piedmont [illegible] on the all important statutory obligation of safety.

[illegible] of Carrier—Failure to Designate State Either Inadvertent [illegible]

[illegible] provides:

> "In the case of an application for a certificate to engage [illegible] air transportation, the Authority may issue a [illegible] *authorizing the whole or any part thereof* for such [illegible] as may be required by the public convenience [illegible], if it finds that the *applicant* (for that service) [illegible] and able properly to perform such transporta- [illegible] to the provisions of this Act and the rules, [illegible] and requirements of the Authority hereunder." ([illegible] and parenthetical material supplied)

The language of the Declaration of Policy (Section 2(f)) leaves no [illegible] objective of the Act was the proper development [illegible] specified in Section 401(d)(2) that it envisioned de- [illegible] organizations competent to supply "the whole or any [illegible] of the transportation sought by that applicant.

[illegible] routes have been awarded to Piedmont for which [illegible] and requiring a character of operation entirely dif- [illegible] which its evidence of competency was submitted. [illegible] it is impossible to consider Piedmont fit, willing and able [illegible] awarded to it.

[illegible] Piedmont's application to be considered broad enough [illegible] awarded, in accordance with section 401(d)(2) [illegible] other sections, such as 401(e)(2) and 401(f), where [illegible] domestic routes are specifically named and where foreign [illegible] are given specific latitude], proof of ability must be [illegible] hearing to cover the authority granted. This was not [illegible]

[illegible] even as to the limited authority sought by Piedmont, [illegible] meet the standards of fitness, willingness and ability [illegible] comparative basis as against State, in terms of the Board's [illegible] and any sound interpretation of the Act.

Facts of record show that a choice between State and Piedmont does not present a "close and difficult question" (Opinion, p. 70, line 26 et seq.) according to those standards.

1. **Pioneering.**

> "Each applicant . . . has demonstrated an *energetic* interest in the conduct of the operations." (Note 13 refers to the Appendix where it is shown that Piedmont's proof was largely devoted to the pick-up proposal which was denied). (Opinion, p. 72) (Emphasis supplied)

State submits that such finding insofar as it applied to Piedmont is not supported by substantial evidence.

The Board has recognized pioneering or interest previously in the following words:

> "It is clear that Western has given greater consideration and effort to the problems involved in the establishment and operation of the proposed route than has Inland . . . Western has been actively engaged in promoting the extension." *Western A. E., et al Great Falls—Lethbridge Operation*, 2 C. A. B. 425, 433, decided December 5, 1940.

If the Board's above quoted finding in the Opinion in this case, the Southeastern States Case, is presumed to include an interest in the authorized operations for Piedmont, which it must since this finding is preliminary to the selection of Piedmont, it has no factual basis since Piedmont, prior to the hearing, not only withdrew the only application it had to include one of the two western terminals, but stated numerous times service was not needed or should be given to another carrier. (See page 12 of this petition.) Also Piedmont did not file exceptions to the Examiners' recommendations for another carrier or lack of recommendations for itself over routes which later it, Piedmont, was awarded. (See also page 12 of this petition).

For its own proposed services, pick-up and passenger, Piedmont showed the following "pioneering interest":

Surveys: "Considerable thought" (Sic) since organization of company (1940) (R-1860).

"Scheduled operation in mind" (Sic) while flying into or over points applied for. (R-1863).

"Preliminary analysis" (R-1833) "The South Atlantic Trade Area". (EX-PI-15)

Operations: No operations conducted with specific purpose of scheduled service.

Pilot training course and charter service cited as only experience (R-1880-2), proposed routes not related "in any respect" to its charter service. (R-1875-6). Piedmont's pilot training was a

drop in the bucket compared to other pilot training programs, such as that of Southeastern Air Service, Inc., who trained 17,000 pilots (but Southeastern's application for a certificate in this proceeding was properly denied). Application amended, separate pick-up and passenger routes, March 10, 1945, one day within deadline for same set by Examiners.

Applications: Application for combined service, dated June 2, 1944, filed. *State's first application was filed before the War* began.

Hearing: Participated May-June 1945 hearing, subsequent briefs, exceptions, oral argument.

Other than the above there was some testimony that Piedmont made some study of the All American Aviation present pick-up operations (R-1867). Except on economic work, no actual survey was conducted, and the economic study prepared was not followed (R-1833). It is difficult to believe an applicant could do less and still be considered an applicant in the proceeding.

In sharp contrast to the above was the interest that State showed, all of which was directed to the routes authorized for which only State applied and proved needed:

Surveys: Route survey including 65 routes showing southeast greatest need. (EX-STA-60, p. 1)

Survey on exemptions to permit preliminary interstate charter service. (EX-STA-60, p. 1)

Survey on acceptance by airline passengers of charter service. (EX-STA-60, p. 1)

Continuing study on CAB decisions. (EX-STA-60, p. 2)

Business firm survey six southeastern cities on travel needs. (EX-STA-60, p. 2)

Charter service rate studies.

45 months record every inquiry, request and trip for charter service. (EX-STA-60, p. 3)

In addition State had two surveys on weather (R-2333, EX-STA-58), an aircraft survey or study (EX-STA-57), airport facilities (EX-STA-80), *none of which were made by Piedmont,* and in addition State presented in its case many other original, exclusive exhibits.

Operations: As noted in Exhibit STA-60, p. 1, State's charter service was originated ". . . to aid in determining the type and

amount of scheduled service needed and location as to routes." As per EX-STA-22, p. 1, State flew 294,054 miles in 45 months, or an annual average of 78,408 miles, nearly twice as much as Piedmont's maximum, whose charter service was not determinative (R-1876), whereas State (EX-STA-22, 23) showed volume, direction and local needs of traffic, as well as financing and operating problems to be met, such as weather and type aircraft required for scheduled service. (R-2333-4, EX-STA-G, p. 7, EX-STA-60, p. 9)

Applications: Between October 21, 1941 and January 30, 1945 State filed four different applications and an amended application including *all* the routes awarded, and the first for east-west services between Wilmington and Louisville through Charlotte and Greensboro, and for east-west service through the Virginias, as well as the first between Detroit and Florida.

Hearings: State was an intervenor in the *Atlantic-Seaboard Case* in brief and oral argument to urge local service for this area and was sustained by the Board, its Order in Docket No. 445 et al., decided September 13, 1943.

State was a party throughout to the Feeder Investigation, Docket No. 857, in which State's views as to the needs for new local operations were sustained by the Board.

State presented a statement in the *Florida Case,* Docket 489 et al, to urge that no local service in Florida be authorized based on needs in this area, as sustained by the Board.

State urged in the *New Bern-Wilmington Case,* Docket 1595 et al, no service be authorized to foreclose local routes, which position the Board sustained.

State participated throughout in the *Great Lakes to Florida Case,* Docket 570 et al, for almost the identical routes in this case, and was deferred due to State's stressing local service, which the Board then ordered to become the issue of the present case, although the *Great Lakes to Florida Case* was originally set up to determine local needs.

Neither Piedmont nor any other new applicant that participated in the present case, *was in any of the above cases,* except that Southern Airways was in the Florida Case and gave a statement only in Docket 857.

Although State participated throughout in the *Great Lakes to Florida Case,* nevertheless it also entered and has gone through this entire case, set up as a new area case, even though the same

issues were to have been previously decided, but in fact were not. "Hearing on these applications (with respect to service through this area) will be assigned in the immediate future..." (Docket No. 445 et al, decided September 13, 1943.)

Now, over three years later, it is the bitterest irony that the Board has selected Piedmont, who never so much as intervened in a single previous proceeding that shaped the existing airline pattern of the Southeastern United States, is awarded routes that only State applied for and proved needed because State "would require more time to set up airline operations." (Opinion, page 73, lines 8 and 9). State submits that this latter finding is not supported by substantial evidence and if necessary, State offers to re-prove at this time that it "could set up airline operations" faster than Piedmont.

2. Organization and experience for airline operations.

(Including War Record Individually and Collectively)

Mr. Davis is President, Treasurer, Director, and the largest of five stockholders, three of whom have only one share apiece. (EX-PI-2, R-1872). He was the only company employee to testify for Piedmont. Therefore, while it is equally reasonable to assume that Piedmont's plans were just as much as the Board said State's plans to be, namely, "... built substantially around one man—its president...", particularly since the president's views frequently conflicted with his economic witness, whom he had engaged to help him, such as on the feasibility of a 100 percent load factor. (R-1832, 1880).

Furthermore, the second largest stockholder, L. S. McGinnis, presumably the former president (Mr. Davis became president June 25, 1943 (EX-PI-1, p. 1)), was no longer an employee and there was no indication that he would have any further connection with the company (R-1871). Mr. McGinnis left the company in January 1944 (R-1871), a few months after Davis became president.

The corporation was formed in July, 1940, (R-1859) at the same time Mr. Davis became vice-president, treasurer and director, when he presumably purchased a controlling interest, and the former company, Camel City Flying Service (EX-PI-1) was abandoned.

The Board cites at some length, on page 72 of the Opinion, the pilot training programs Piedmont carried on during the war. However, the last program was obtained in April, 1943, whereas Mr. Davis did not become president until June 25, 1943. *It is perfectly obvious that Mr. McGinnis was responsible for obtaining and directing these programs and he was no longer active in the management of the company.*

Thus "*Piedmont's wartime experience*" which "enabled it to obtain a well-rounded organization with *key personnel who are thoroughly familiar with the operating conditions of the area involved*" (Opinion, p. 73, lines 6 and 7) is in fact without foundation since the man responsible, Mr. McGinnis, for that experience, had left the company before the hearing in this proceeding.

In fact, it could not be otherwise since no capable aviation executive would seriously propose operating single-engine aircraft on schedule with passengers across the Appalachian mountains between Charlotte and Knoxville, over an area that it has taken years to find the wreckage of previous disasters. Quite to the contrary, any one "*thoroughly familiar* with the operating conditions of the area involved" would not propose such an operation over any *part* of the area using aircraft considered hazardous for this purpose by the Board years ago. State submits that there is no substantial evidence to support the finding that the "key personnel are thoroughly familiar with operating conditions in the area involved".

Operating a pilot-training school is one thing. Operating a scheduled passenger airline is another. They are worlds apart. *Piedmont proposes to run an airline like a flying school.* The most vivid comparison in this regard is the carefully planned presentation of Southern Airways, Inc., as against the far inferior presentation of Southeastern Air Express, Inc., although the latter's associated companies, with over 1500 employees had trained over 17,000 pilots, with a business volume of over $13,000,000 during the war (EX-SAE-II, pp. 13-14). Southern was awarded routes, Southeastern denied.

Neither Piedmont's president, its other officers, witnesses, stockholders, or present employees were shown to have ever had any experience whatever on scheduled operations. No wonder the president, its sole employee-witness, did not know the Civil Air Regulations on single-engine aircraft (R-1869), and had never made any study of the weather which is a major source of airline accidents.

There is insufficient evidence in the record to support the finding that key or other personnel "*are qualified*" "*to set up airline operations*". (Opinion p. 73 lines 6-7) As the Board said in regard to Mr. W. W. Edmondson for Virginia-Central Airlines (Opinion p. 70), "The testimony of Mr. Edmondson, the operations witness, who is undoubtedly a well-qualified pilot and fixed base operator, demonstrates that he is unfamiliar with airline operations." Even so Mr. Edmondson knew enough not to propose single-engine operations.

The good business record of Piedmont was emphasized by Piedmont's attorney in oral argument (R-682). However, Piedmont's attorney failed to point out that apparently according to the photograph (EX-PI-11, p. 2) of the Winston-Salem airport, they possess the sole facilities, if not an actual monopoly, on all fixed base operations at the only airport in Winston-Salem, and which was not restricted by Army operations during the war. According to the Winston-Salem exhibit, this city has more incomes over $10,000 than any other city in the Carolinas. Under these conditions and the benefit of Government contracts, as compared with four airports in Charlotte (Airmen's Guide) and Army possession of all facilities (EX-STA-G, p. 14) at the Municipal Field, there is no relative comparison of the net results as regards business ability.

As a qualification, Piedmont included in its exhibits, PI-8 and PI-9, which were simply standard cross-country log and maintenance forms (R-1920). The ability to fill out such forms which are similar to forms that were in use throughout the country, and to those that are a part of the equipment of every private aircraft, is no criterion of ability to operate an airline, or originality of thought.

State also submits that the fact that Mr. Davis "was born in Winston-Salem and has always lived there" (oral argument R-252) is rather a disqualification than otherwise, since in spite of this fact, he did not regard service to other important North Carolina cities such as Greensboro-Hgh Point, Raleigh, Durham, and New Bern, as necessary to be included in his application, whereas State did and the Board did.

The other side of the picture starts with the words, ". . . State's plans are built substantially around one man—its president, Mr. Gilbert. . ." (Opinion, p. 73, lines 3-4). Entirely eliminated from consideration by this phrase are the 52 stockholders (EX-STA-73) (more than half of the stock being owned or controlled by veterans); personnel and experience of employees (EX-STA-G, p. 6; EX-STA-66, pp. 1-2), who believed in State's plans sufficiently to see it through six CAB proceedings in order to obtain the routes which it pioneered, only to have the Board hand a disqualified applicant the award on a silver platter for the second largest feeder system in the country. (Estimated route mileage 1719, second largest out of 16 feeder carriers.)

The "one man" appellation is particularly hard to swallow, since the majority of stock of State Airlines was owned or controlled by men who during the war, at the time of the hearing, were serving their

country in the Armed Forces (EX-STA-G, p. 5, R-2371), whereas for Piedmont, there wasn't a single stockholder that was ever shown to have been in the Armed Forces.

Of the "Seventeen Principal Stockholders" shown on EX-STA-73, ten were in uniform. The Estate of Robert W. Canfield represents the widow of Major Canfield who was shot down over Germany. State asks no favors on this account, but when it has gone forward for seven years to provide a vitally needed service and seen its routes given wholesale to an applicant that proposes an impossible operation and then is characterized unfavorably as a "one man" company.

The only directors that State had at the time of the hearing (EX-STA-73) represented the interests of stockholders then in the Army. In fact, of all the new applicants in this proceeding, State was the only one that represented a substantial investment by stockholders, who at the time of the hearing, while the war was still on, were in the Armed Services.

Nevertheless, State was the only new applicant in the proceeding to show that it had an agreement with an experienced airline executive for future employment, Lowell S. Harding, "Former Airlines War Training Institute Official, CAA regional air carrier inspection chief and operations vice-president for a certificated air carrier" (Colonial Airlines) (EX-STA-G, p. 6), to have two witnesses, financial and operational, experienced in airline matters, Donald S. Stralem of Hallgarten and Co. (R-2416-7), and E. H. Pickering, Director of Air Market Data Service (R-2429), and had employed six men who had held or still held executive airline positions (EX-STA-66). Piedmont had *not one man* in any of these categories.

In addition to citing "Piedmont's wartime experience", the Board also cited its "extensive charter operations" as enabling it to obtain "a well-rounded organization". (Opinion p. 73 lines 3 and 4) On the prior page (Opinion p. 72 lines 24 and 25) it mentions 41,875 charter miles flown in 1944 and 26,000 miles in the first five months of 1945. However, *not one word is* mentioned about State's charter service.

State flew nearly twice as many miles annually as did Piedmont and *four times as much* total charter mileage. State flew almost 300,000 miles (P2. STA-22), an annual average, over a 45 month period, of 78,408 miles. It operated its service under severe wartime handicaps (EX-STA-G, p. 14), such as aircraft overhauls done outdoors due to Army occupancy of all hangars. It provided innovations and an improved service that to State's knowledge was unexcelled (EX-STA-60, p. 9) State originated a new type of tariff, a colorful circular and a

ticket designed for the purpose (EX-STA-61, 62, 63), none of which Piedmont had. It compiled its own operations and ground personnel manuals (EX-STA-G, p. 1), whereas the limit of Piedmont's ingenuity was submission of Government log and maintenance forms (EX-PI-8, 9).

In this case, State probably gave the Board the largest and most thorough analysis of charter service it has ever received (EX-STA-22, 23, 60). From Piedmont's charter service, Piedmont did not draw one conclusion that was of any value to it or the Board, although Piedmont's president was questioned on the subject twice. (R-1876, 1910) The only record of trips Piedmont submitted was an involuntary one made at Eastern Air Lines' counsel's request.

The result of State's experience on charter service is incorporated throughout its planning. For example, on page 10 of EX-STA-22 the charter record number for Cincinnati is one place over that for Tri-Cities. This parallels the relative positions of these two points for Charlotte hotel registrations (EX-STA-81, p. 5). Likewise, EX-STA-23 shows by charter service the practicality of shorthauls between points 86 miles apart. In addition, the need for rigid maintenance, pilot procedures, the costliness of aircraft changeovers, the need of weather surveys, of stock financing, about city relationships, and the feasibility of agency contracts were all and more developed into State's practical operating plans, that State's stockholders paid for with their own money and that would be given gratis to Piedmont, who from their own charter service learned nothing.

It should also be noted that whereas Piedmont in gaining "wartime experience" was only one of a large number of schools, nearly every fixed base operator trying to climb on the bandwagon. On the other hand, State engaged in extensive charter service from 1941, whereas Piedmont's evidence refers to services apparently beginning in 1944. State's charter service supplied an acute need due to the lack of fast transportation, and that as a result of State's preeminence was the only known charter service to be authorized for personnel transportation by the Air Transport Command (R-2373), though due to rapid acquisition of larger planes of its own, this service was not used as such.

The feeder system that State conceived and proved needed is the finest in the United States of all those the Board has awarded, and it deserves and the public deserves the best operation that it can be given, and that only State has shown the ability and knowledge to render.

3. Availability of organization and equipment for scheduled operations.

American Export Airlines, Inc., Docket No. 694, New York-Foynes Service, decided December 19, 1941:

> "In determining the fitness, willingness, and ability of an air carrier in past proceedings, the Board has never found it reasonable to establish the immediate availability of aircraft and personnel as a test, but has considered it adequate that a proper organizational basis for the conduct of air transportation should have been established; a plan for conduct of service made by personnel shown to be competent in such matters; and the availability of financial resources demonstrated." (3 C. A. B.—294, 298)
>
> "It must be recognized that in practically all situations in which extensions of service are required, the large carrier would be in a better position with respect to immediate inauguration of service. Except in the most urgent circumstances considerations of this kind cannot be considered as controlling. Under the present circumstances, we are of the opinion that public convenience and necessity can best be served by the granting of a temporary authorization to National."(*National Air, Miami-Key West Service* 4 C. A. B., 546, 548)

In view of the above decisions which State and its stockholders have accepted in good faith as expressing the Board's sincere views, there is certainly no urgent reason for any other conclusion. It is now nearly two years since the hearing and the end of the war. Existing conditions reveal no shortage of skilled personnel. Furthermore, as previously shown, there is no substantial evidence in this record to support the finding that Piedmont's "personnel are qualified" "to set up airline operations" (Opinion p. 73). Actually, there are many tasks prior to operation that require managerial air transport knowledge which Piedmont did not show it possessed or intended to get, whereas State did. (EX-STA-66). Piedmont, as previously noted, has no cost allowance in its estimates to pay for preliminary planning for any type of operation, let alone the one that is required.

Furthermore, the record does not show that any of Piedmont's named personnel would have any definite status: M. F. Fare, "probably" secretary, T. H. Davis, president "probably", J. F. Groat "probably" chief pilot (R-1873). F. H. Ponish "probably" superintendence of maintenance (R-1878-9). None were shown to have scheduled air transportation experience or to be qualified to "set up airline operations".

The Opinion, on page 71, line 10 to 13, finds that Piedmont:

> ". . . does own approximately 50 percent of the required furniture and fixtures, and all of the necessary shop equipment except a few special tools."

There is no basis in the record to support this finding for the type of operation that would have to be conducted and over the routes awarded.

4. Financial ability—State far superior.

The availability of financial resources is an important element in fitness, willingness and ability.

In *Northwest Airlines, Inc.*, Docket No. 629 et al., Chicago-Milwaukee-New York Service, decided December 16, 1944, the Board at page 21 of the mimeographed Opinion said:

> ". . . the direction in the Act to foster sound economic conditions in air transportation and to improve the relations between and coordinate transportation by carriers makes it necessary that we keep in mind the financial position of a carrier since its ability to provide service will be affected by its financial position."

Similarly, in the *Latin American Case*, Docket No. 525 et al., decided May 17, 1946, it was stated at page 48:

> "The Board must be satisfied that the applicant has adequate capital or is in a position to raise capital economically . . . "

Piedmont's estimated total requirements were $1,100,000 of which $700,000 was to be raised by stock sales and $400,000 by an equipment bank loan (EX-PI-6). There was only actually a total of something over $100,000 "subscribed," and a bank committed to loan "up to $400,000" on equipment (war surplus aircraft, see R-1901). If the subscription commitments were firm ones, it would be a poor enough showing for the second largest feeder airline in the country, but, at the hearing, there was merely hearsay testimony as to the subscribers, no written subscriptions having been introduced in evidence. The amounts of the individual subscriptions were not disclosed.

The whole matter of financing was treated in a most casual manner. It was testified that "over a hundred thousand dollars. . . " (R-1865) was subscribed during "three afternoons after the hearing, here." (R-1926) A witness from the bank (R-1887) testified as to the loan and the financial ability of the approximately dozen subscribers (R-1917), with the exception of one or two he did not know, whose subscriptions were

"rather small" (R-1889), without revealing what any of the persons had subscribed. This witness also testified it would be best if ". . . citizens in and around Winston-Salem would personally subscribe to the required amount. . . ", that the subscribers consider the risk a normal one (R-1895) and that the bank will ". . . lend everyone anything they subscribe for." (R-1892)

Mr. Davis said that he had talked to all personally, although one subscriber, whose name was most prominently mentioned (R-1877, 1890, 1892, oral argument R-253) was said by the bank witness to be in Washington "at this time" (R-1893) and that his subscription was in the form of a letter. Mr. Davis had also testified that he had only tried to make a showing "*to a certain extent.*" (R-1917).

The above evidence makes it perfectly plain that Piedmont's financial showing was just as thoughtless and confused as every other part of their case. Obtaining subscriptions was merely an after-thought after the hearing started.

Yet, Piedmont was awarded routes, which State pioneered, on the financial testimony of a banker for a loan on war surplus aircraft (R-1901) whose value he could not possibly have known and whose maximum previous loan was apparently $10,000 (R-1885), and on a total contingent and vague subscriptions of a little over $100,000, including only one stockholder, the president's brother, who held one share of stock. Obviously, the banker was carried away with himself when he said the bank was not only going to loan $400,000 but also would ". . . lend everyone anything they subscribe for," and had no idea of what the risk was (R-1895). Also while he belittled some of the subscribers (R-1889) and Davis belittled his own efforts (R-1917), it is apparent that a very determined effort was made by someone to contact the subscriber who was in Washington, and whose name was thereafter put on display. Presumably, with a scintilla of a showing as to $100,000 raised Mr. Davis quit.

This type of showing is to be expected whenever the principal benefit will be *one man*, in this case Piedmont's president, its only large stockholder that will have any connection with the company, where, on the other hand, there are fifty-two stockholders to share in State's success. Piedmont's president, T. H. Davis, owns over 61 percent of the stock at present and L. S. McGinnis owns over 37 percent of the stock. Neither are veterans. These two men stand to profit greatly from this award. This type of corporate ownership is a situation lending itself perfectly to trading in feeder airline certificates. As contrasted with that, State, at the time of hearing, had fifty-two stockholders (now

more). As previously stated, 67 percent is owned or controlled by veterans. The largest single stockholder owns 13.9 percent and State's president 10.5 percent.

Actually, the same sort of flimsy financial showing Piedmont gave may be similar to that for other feeders who have had financial difficulties and who represented that their own unskilled efforts would easily enable them to secure whatever financing was needed. There is no less need for experience in financing than there is in operating an airline, and State believes that there is no question on the basis of the record as to its far greater ability than Piedmont in these respects.

State's attitude and State's showing were just 100 percent the opposite. State tried to make the best financial showing, as well as every other kind of a showing.

State showed that, whereas a number of stockholders intended to purchase substantial amounts of additional stock, firm commitments could be obtained from the largest stockholders who were in the Armed Forces. (EX-STA-G, p. 5)[4]

The Examiners' Report stated:

> "The stockholders of the company (State) have a net worth of about $2,000,000 according to sworn statements and they have indicated their willingness to purchase substantial blocks of stock if a certificate is acquired." (p. 92)

State took exception to this which was undoubtedly an inadvertent error as there was evidence that only a half dozen of the fifty-two stockholders had at the minimum a net worth of such amount. (R. 2341)

Donald S. Stralem, partner of the underwriting firm of Hallgarten and Co., (R-2418). who had also appeared for State in the *Great Lakes to Florida Case,* Docket No. 570 et al, testified that they would underwrite *whatever amount was needed* (EX-STA-75, R-2419), which was anticipated to be approximately $4,000,000, and that this would be done primarily with risk capital so that the company would not be debt-ridden at the start (R-2418). See *American Export Case,* 2 CAB. 16, 42.

Hallgarten & Co., founded in 1850 (R. 2417) is long experienced in airline financing having been a major underwriter in the original financing of Aviation Corporation in 1939, and a participant in underwritings for "Western Air in 1937, American Export Lines in 1938, Pan American Airways in 1940, TACA Airways, 1945." (R-2417) American Ex-

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4 "Now today a great many of our stockholders—our largest stockholders—are in the Army and the Navy and the biggest stockholder is overseas in Europe right at the present time * * *" (R. 2371).

port constituted the first new applicant certificated by the Board on a temporary basis.

Hallgarten's experience in the field of airline financing and their realistic view that price per share or the amount required could not necessarily be predetermined is a sound guarantee of success. Their distribution through local participants in the cities on the routes (EX-STA-G, p. 5) would further insure added interest in State's welfare than restriction to one single community.

State's showing, therefore, was based on expert testimony in airline financing, whereas Piedmont's was not. State showed a firm commitment for as much capital as would be required, which might total several millions, whereas Piedmont's only firm commitment for risk capital was for something over $100,000.

Thus even with the handicap that State had, of stockholders in the Armed Services, while Piedmont had none, State's financial showing was incomparably superior.

(5) Planning.

The planning demonstrated by an applicant is an important element in certificating a carrier.

In *Western A. E. et al., Great Falls-Lethbridge operation*, 2 CAB 425, 433 decided December 5, 1940, the Board declared:

> "It is clear that Western has given greater consideration and effort to the problems involved in the establishment and operation of the proposed route than has Inland."

In the *Latin American Case*, Docket 525 et al, decided May 17, 1946, page 48, the Board also said:

> "The applicant's ability to develop the service must be adequately demonstrated before a certificate can be granted . . . that it is familiar with the problems involved in providing common-carrier transportation. . ."

Piedmont's presentation revealed nothing more forcibly than its complete lack of planning.

A digested comparison of the planning of the two applicants, appearing from the evidence, is as follows:

	State	Piedmont.
Personnel	Past, present and future experienced airline operations. (EX-STA-G, p. 6, STA-66)	Status of all present personnel indefinite, no airline experienced operating personnel contemplated.
Aircraft	Proven certificated twin-engine aircraft for scheduled passenger operations. (EX-STA-G, p. 7)	Obsolete aircraft proposed according to CAB's standards.
Costs	Complete cost provisions. (EX-STA-33 through STA-56)	No applicable cost item shown for required operations.
Safety	Number One policy (EX-STA-G, p. 1) in accordanee airline standards. (CAR.04—EX-STA-57, p. 3. Weather EX-STA-58.)	Total lack of airline safety standards.
Traffic	Complete estimates EX-STA-31, 32, 33, realistically based on time savings EX-STA-12, 13, 27, and community of interest revealed by charter EX-STA-22, and hotel registrations EX-STA-81.	Innumerable, confused and irreconcilable theories with no time savings or community of interest foundation; predicted 100% load factor.
Effect on Existing Transportation	Complete diversion and competitive aspects shown in EX-STA-76, 77, 78.	None shown.
Airport Facilities	Complete record in EX-STA-80.	None shown.
Financial Showing	Excellent.	Indifferent. Directed to different type of equipment, service and routes to that awarded.

SUMMARY.

This is the first real opportunity that the Board has had to make an award of a feeder route system to an applicant owned and controlled (67 percent) by veterans of World War II. Both Public Counsel and the Examiners had recommended State Airlines, and both Public Counsel's brief and the Examiner's report had commended its complete and detailed proof. But the Board has rejected the application entirely.

The decision has tentatively awarded the second largest feeder system (in terms of route miles) to an applicant (Piedmont) who put in one of the poorest cases ever to receive a certificate, and did not apply for 1200 of the 1719 route miles awarded. Many of the applicants were fixed base operators and ran flight instruction schools during the war, but State operated an extensive non-scheduled air transport service and was the only non-scheduled operator in the United States designated by the Air Transport Command to carry military passengers during the war.

There was nothing in the application, exhibits, testimony or other proof presented by Piedmont as to the routes awarded. The applicant had proposed service with single-engine equipment which is not in accordance with safety regulations for scheduled air transportation. Its proposal was principally a pick-up operation over almost diametrically opposite routes to those awarded. One of the routes awarded, Piedmont had said should be granted to another applicant. In fact, it had specifically disavowed and disclaimed on the record over half the route mileage awarded. On the other hand, State's proposed routes coincided almost exactly with the route system awarded.

Piedmont's proposal showed a disregard for safety as to (1) aircraft, (2) airports, (3) navigation aids, (4) weather, and (5) personnel. Not only did Piedmont get a free ride on State's proof of public convenience and necessity for the routes awarded, but Piedmont submitted no evidence of cost applicable to the route award, time savings, speed, airport facilities. It showed no airline experienced personnel or any definite commitment to obtain same. It proposed service with single-engine equipment and in addition anticipated a 100 percent load factor.

State Airlines on the other hand put in complete proof on these and other matters and showed pioneering in local air transportation and an interest in its development that was not surpassed by any applicant.

State's financing proof was of the best, while Piedmont's proof was casual, vague and insufficient. Piedmont's stock is owned 61 percent by one man and 37 percent by another, a situation lending itself perfectly to a quick turnover in the trade of the certificate. There was no

indication that these two stockholders would put any more money into the enterprise or could or would retain control.

In this connection, the Board said in the *Florida Airways-Gordon*, Docket No. 2314 et al, decided October 31, 1946, page 10:

> ". . . a continued favorable regard among investors for feeder air carrier shares is essential for the success of the feeder experiment."

For nearly six years State Airlines has been trying to obtain a certificate of public convenience and necessity. The Board's opinion (p. 73) states that State could not "set up airline operations" as quickly as Piedmont. State has these many years been preparing itself (including nearly two years since the hearing) to be ready to start operations as quickly as possible after a certificate should be issued. State contends that its proof is adequate on that point and that there is no substantial evidence to support the implied finding that State "would require more time to set up airline operations than would" Piedmont. State offers to prove on rehearing that it can set up airline operations in less time than Piedmont.

State also urges that the implied finding at page 73 of the Opinion that Piedmont had or has a "well-rounded organization with key personnel who are thoroughly familiar with operating conditions of the area involved" is not supported by substantial evidence of record. State further urges that there is no substantial evidence of record to support the implied finding at lines 10-13 of page 71 that Piedmont "owns approximately 50 per cent of the required furniture, fixtures, etc." for the *service awarded*.

State alleges that there is no substantial evidence of record to support the implied finding that Piedmont has demonstrated an energetic interest (p. 72, lines 4-6) in the operations tentatively authorized by the Board. State alleges its superiority in air transportation experience, organization, finance, cost estimates, pioneering and planning require its selection and certification.

As contrasted with Piedmont, State is owned by over fifty-two stockholders, the largest of whom owns 13.9 percent of the stock; 67 percent of the stock is owned or controlled by veterans. It seems clear that the award to Piedmont must have been through either an oversight or through arbitrary action instead of fair discretion in the exercise of the Board's authority.

State Airlines put forward a superior case and was recommended by the Examiners as well as Public Counsel. But the Board has passed over these recommendations without comment and denied the application of the only applicant who applied for and proved the need for its service on the routes awarded.

State Airlines honestly believes that it is unthinkable that the Board could have been thoroughly familiar with the record in this case and still have made the decision it did.

WHEREFORE, State Airlines requests that the Board reconsider and correct its decision in this case, and to hold reargument and for rehearing, if necessary, to amend its decision and order of April 4, 1947 to grant to petitioner the authority tentatively granted to Piedmont, and for such other, further and different relief as to the Board shall seem proper.

Respectfully submitted,

STATE AIRLINES, INC.,
Applicant,
By WILMER A. HILL,
Its Attorney.

Of Counsel:
AMES, HILL & AMES,
Transportation Building,
Washington 6, D. C.

Dated at
238-241 Transportation Building,
Washington 6, D. C.,
May 8, 1947.

Verification.

CITY OF WASHINGTON, DISTRICT OF COLUMBIA, ss:

The undersigned officer of State Airlines, Inc., makes oath and says that he has read and is familiar with the contents of this petition for reconsideration, that he intends and desires that in granting or denying the rights and privileges requested, the Civil Aeronautics Board shall place full and complete reliance on the accuracy of each and every statement therein set forth; that to the best of his information and belief, every statement contained in this petition is true and no such statement is misleading; and, in his opinion, the petition does not omit to state any facts known to him which would be deemed by the Board to be of importance to it in reaching its determination in connection therewith.

H. K. GILBERT, JR.,
President.

Subscribed and sworn to before me this 8th day of May, 1947.

JOSEPH FITZGERALD, JR.,
Notary Public, D. C.

My Commission expires April 14, 1948.

Certificate of Service.

I hereby certify that I have this day served the foregoing petition upon all counsel who appear of record in this proceeding affected by State Airlines, Inc. application, by causing to be mailed to each of them a copy thereof properly addressed, postage prepaid.

Dated at Washington, D. C., this 8th day of May, 1947.

WILMER A. HILL.

VOL. 23 R. 12486-12497

BEFORE THE

Civil Aeronautics Board

Washington, D. C.

In the Matter of

THE SOUTHEASTERN STATES CASE

Docket No. 501 et al

ANSWER AND PETITION ON RECONSIDERATION OF WILMINGTON, N. C.

Address Communications to:

H. E. BOYD,
Industrial Traffic Manager,
City of Wilmington, N. C.
321 Princess Street,
Wilmington, N. C.

June 28, 1947.

BEFORE THE

Civil Aeronautics Board

WASHINGTON, D. C.

In the Matter of
THE SOUTHEASTERN STATES CASE
Docket No. 501 et al

ANSWER AND PETITION ON RECONSIDERATION OF WILMINGTON, N. C.

Comes now the City of Wilmington, North Carolina and respectfully submits its answer to the petition of Delta Air Lines, Inc., (Delta) and the petition for rehearing, reargument and reconsideration and amendment No. 1 to such petition filed by the City of Charlotte, N. C.

1. Wilmington, N. C. in 1940 had a population of 33,407 and in 1946 had an actual population of 47,600. It is the second largest petroleum products and fertilizer port on the Atlantic Seaboard and it is also an important port for lumber, tobacco, molasses, sugar, and various other commodities. It is an industrial and agricultural center in the Carolinas.

2. Wilmington is presently served by only one airline—National Airlines, on Route 31. In the above entitled proceeding it was named as an easterly terminal point on the feeder route system tentatively awarded to Piedmont Aviation, Inc. This award would apparently provide feeder airline service between Wilmington and the principal cities of North Carolina and Virginia, and also to Louisville, and Lexington, Ky. and Cincinnati, Ohio.

3. The petition of Delta and the petition and amended petition of the City of Charlotte requests the Board to include

Charlotte as an intermediate point on Route 54. The petition and amended petition of Charlotte also requests the Board to include Charlotte as an intermediate point on PCA's Route 51. The City of Wilmington, N. C. opposes both requests for the reasons hereinafter set forth.

4. The feeder airline system tentatively certificated by the Board is approximately the second largest feeder airline system to be awarded. As an easterly terminal point on this route system, Wilmington is interested in securing for itself the utmost air service that can be provided.

Wilmington's position as the major port city serving the State of North Carolina, and parts of South Carolina and Georgia is dependent on rapid communication and transportation with the cities it serves. Wilmington is the nearest Atlantic port to the Ohio gateways. If Charlotte, N. C. were to be added to Delta's Route 54 it is obvious that such authorization would give Delta a trunk line route from Charlotte to Asheville to Knoxville to Lexington to Cincinnati to Chicago. This route would so substantially parallel the tentatively authorized feeder route as to divert so much traffic from it that it would be unable to compete between the North Carolina cities and the cities across the Appalachians. This would mean that Wilmington, which has not been awarded trunk line service, would suffer at the expense of Charlotte. Not only would service to Wilmington suffer but the entire success of this feeder airline experiment would be almost certain to be dissipated by the traffic diversion occasioned by the certification of Charlotte on Route 54.

5. PCA has not even petitioned to add Charlotte to its Route 51. This is consistent with PCA's present policy in CAB proceedings to seek the long-haul routes. PCA now deprecates its short-haul character in the air transport industry. In addition, to the fact that PCA is not anxious to serve Charlotte, the certification of that point on Route 51 would have a similar effect to its certification on Route 54; that is, such an authorization to PCA would give PCA a trunk line route across the State of North Carolina which obviously would divert a large

amount of traffic from the new feeder route system, thus making the feeder carrier's tasks more difficult, and again, with consequent loss of service to Wilmington, N. C. The certification of Charlotte on Route 51 would be at the expense of better airline service to Wilmington.

6. Wilmington endorses the petition of State Airlines, Inc., filed with the Board May 8, 1947. Wilmington has consistently believed that State Airlines was the best feeder airline applicant for routes in this part of the Southeastern United States. State Airlines applied almost six years ago to the Board for precisely the same routes as have been awarded. To the knowledge of officials of the City of Wilmington, Piedmont Aviation Company not only did not propose the type of service that Wilmington wants but did not apply for the routes awarded by the Board, except in some minor particulars. Piedmont has never consulted to determine Wilmington's needs as contrasted with the active interest in Wilmington shown by State Airlines ever since it filed its application almost six years ago.

7. State Airlines is thoroughly experienced in air transport matters in the Piedmont area having conducted extensive non-scheduled operations in this area. State Airlines had been recommended for the feeder airline system by both the CAB Public Counsel and the CAB Examiner but was overruled by the Board. We respectfully request the Board to concur in and accept these recommendations.

8. In the Board's opinion, Pages 71-73, the Board rejected State Airlines application on the grounds that Piedmont Aviation "owned 50% of the required furniture, and fixtures and all of the necessary shop equipment except a few special tools." This hearing was held during the war and Wilmington Airport was restricted as Army property and no further information could then be furnished publicly on this subject. It can now be revealed that State Airlines following the favorable recom-

mendations of the CAB Public Counsel and Examiner, arranged to make its base in Wilmington. The airport facilities which have been and are now available to State Airlines include ample hangar, shop and office space with essential equipment, at Bluethenthal Airport. This airport cost $11,000,000, occupies 1200 acres of land, has three 7,000 foot runways and is one of the finest airports in the country. The City of Wilmington believes that the denial of State Airlines' application to serve the route tentatively allowed Piedmont is not in the best interest of the city of Wilmington and, in fact, is contrary to its best interest for that it appears that State Airlines can furnish comparable equipment and comparable air service, and that, in addition, State Airlines will provide employment for approximately 150 persons in the establishment of its base of operations if its application is favorably acted upon and it is further shown that Piedmont would employ not more than 25 to 30 persons. In addition to the desire of the City of Wilmington to obtain the best available air service, it is interested in obtaining additional terminals and industrial employment and respectfully asks review and consideration of State Airlines' application not inconsistent with the policy of CAB. The City of Wilmington also expresses the hope that prompt action may be taken on the pending application of May 8, 1947, so that adequate air service may be soon provided and that the cities covered and the routes outlined will be substantially maintained, and that there be no substantial changes in the cities covered and the routes outlined in the application of State Airlines.

9. A point is also made at Page 73 of the Board's opinion that State Airlines "Would require more time to set up airline operations" than Piedmont Aviation. Wilmington has ample trained personnel available for the mechanical needs of State Airlines who are available at the airport having returned from wartime aviation service (See Appendix). Wilmington looked forward to the award of the feeder route system to State Airlines and was ready to welcome it as a new industry with its base of operations at Wilmington. The operation of the feeder airline

route system having a base at Wilmington (as planned by State Airlines) would have obvious operating advantages; to have the principal base of any airline at a mid-route point is to handicap the operation to begin with.

10. The strategic position of Wilmington's Bluethenthal Airport made it the key Carolina coastal defense base during World War II. It is essential to future National Defense needs that it be kept in as fully operative condition as possible. The location of State Airlines base at this $11,000,000 airport would be of inestimable benefit to achieve this purpose. Photographs of the airport and the hangar, shops and offices available to State are attached in the Appendix.

11. Wilmington does not request special treatment, but its requests herein are consistent with a plea for equally good air transport for ALL cities in North Carolina, all the cities tentatively certificated on the feeder airline system and for cities which may in the future be added to this feeder airline system.

WHEREFORE, the City of Wilmington, N. C., requests the Board to (a) deny the petition of Delta Airlines to add Charlotte, N. C. as an intermediate point on Route 54; (b) deny the petition of the City of Charlotte, N. C. to be designated as an intermediate point on Routes 51 and 54; and (c) grant the petition of State Airlines, Inc., to be substituted as the feeder airline carrier to operate the routes tentatively awarded to Piedmont Aviation, Inc.; and for such other and proper relief as to the Board may seem appropriate.

Respectfully submitted,

CITY OF WILMINGTON, N. C.

By:_____
H. E. Boyd, Industrial Traffic Manager.

By_____
E. L. White, Mayor of the City of Wilmington.

VERIFICATION

The undersigned officer of the City of Wilmington makes oath and says that he has read and is familiar with the content of this answer and petition on resonsideration, that he intends and desires that in granting or denying the rights and privileges requested, the Civil Aeronautics Board shall place full and complete reliance on the accuracy of each and every statement therein set forth; that to the best of his information and belief, every statement contained in this answer and petition is true and no such statement is misleading; and, in his opinion, the answer and petition does not omit to state any facts known to him which would be deemed by the Board to be of importance to it in reaching its determination in connection therewith.

H. E. Boyd,
Industrial Traffic Manager.

Sworn to and subscribed before me this 28th day of June, 1947.

Mary E. Gano. Notary Public

My commission expires Dec. 5, 1947.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer and Petition on Reconsideration in the Southeastern States Case Docket No. 501 et al, on each party of record to this proceeding by mailing a copy thereof, properly addressed, to each such parties.

Dated at Wilmington, North Carolina, this 28th day of June, 1947.

H. E. Boyd,
Industrial Traffic Manager.

APPENDIX

The following is the most recent list of skilled personnel available at Wilmington, to State Airlines, Inc., furnished by Wilmington office, U. S. Employment Service:

TABLE I

VETERANS WITH AVIATION EXPERIENCE

1.	Aircraft Armorers	5
2.	Aircraft Inspectors	1
3.	Aircraft Radio Electricians	1
4.	Airplane Dispatcher Clerks	2
5.	Airplane Mechanics	34
6.	Airplane Pilots	6
7.	Cryptographers	1
8.	Instrument Repairmen	4
9.	Meteorologists and Weather Bureau Clerks	2
10.	Stewards — Hostesses	5

VETERANS WITH RELATED MECHANICAL EXPERIENCE

1.	Auto Mechanics, Body Builders, Truck Mechanics	52
2.	Canvass Cover Repairman, Office Machine Repairmen	3
3.	Carpenters, Ship Carpenters, Shipwrights and Helpers	83
4.	Crane Operators, Followers, Signalmen, Riggers	19
5.	Diesel Engine Operators, Engineers and Mechanics	5
6.	Electricians all types, Automotive, and helpers, Electric Motor Repairmen	56
7.	Foreman, various types	15
8.	Inspectors and Assemblers, Installation, various types	37
9.	Machinists, Machine Operators, Maintenance Mechanics, Maintenance Building	27
10.	Mechanical Repairmen Trainees	32
11.	Misc. Construction Workers, not otherwise classified	7
12.	Painters, Brush, Stage, Spray, Helpers, etc.	53

13. Plumbers, Steamfitters, Pipefitters, Pipe Benders and Helpers 68
14. Radio Repairmen and Neon Sign Servicemen, Testing Machine Operators 11
15. Scraper, Pan, Bulldozer, Motor Grader Operators 7
16. Sheetmetal, Coppersmith, Solderers, Layout, Take-off, helpers, etc. 27
17. Structural Steel, Iron Workers, Reinforcing Iron Workers, Blacksmiths, Riveters 9
18. Tool Grinders, Boilermakers, Locksmiths, Gunsmiths 8
19. Welders, Burners, Helpers, (Arc, Gas, Unionmelt, Combustion) 103

VETERANS WITH DESIRED SKILLS IN COMMUNICATIONS AND UTILITIES

1. Linemen, Cable Splicers, Telephone and Station Installers 15
2. Power House Engineer, Generator and Turbine Operators, Oilers 4
3. Radio Operators and Announcers 15
4. Teletype and Telephone Operators 6
5. Traffic Manager 1

VETERANS WITH ADMINISTRATIVE, EXECUTIVE AND PROFESSIONAL SKILLS

1. Accountants, Office Manager, etc. 32
2. Draftsmen and Trainees 4
3. Photographers 11
4. Production Mgrs.; Purchasing Agents, Engineers, Personnel, etc. 31
5. Surveyors, Rodmen, Chairmen 5
6. Technicians, Laboratory Workers 22

VETERANS WITH SKILL IN PROTECTIVE SERVICES AND SERVICES

1.	Auto Service Station Attendants	28
2.	Countermen, Soda Clerks, Waiters, Cooks, etc.	45
3.	Firefighters, Firemen, etc.	6
4.	First Aid, Orderlies, Hospital Attendants	11
5.	Guards, Investigators, Watchmen, Patrolmen, Detectives, Policemen, etc.	45
6.	Ticket Takers, Ushers, Cashiers, etc.	10

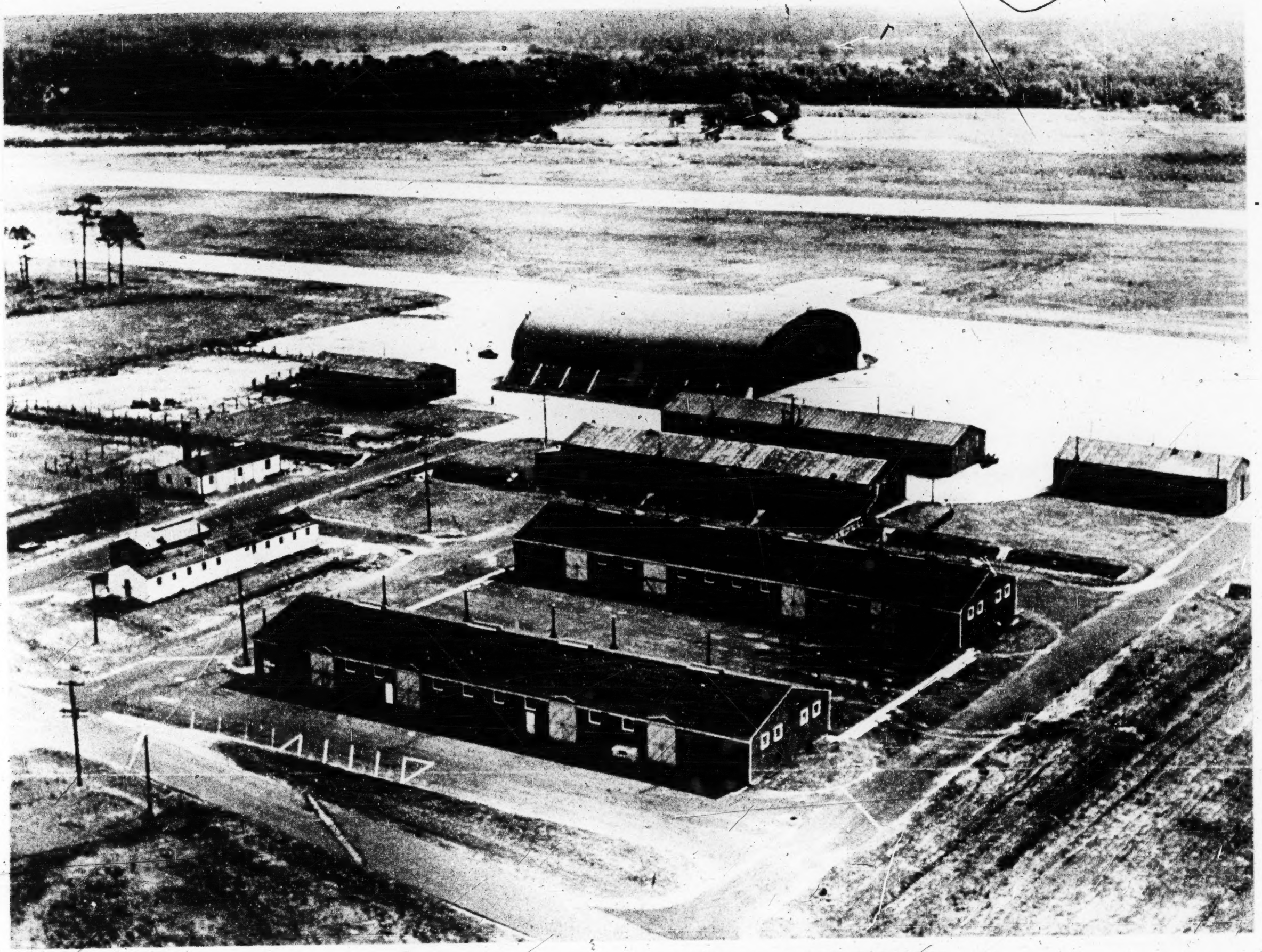
VETERANS WITH OFFICE, CLERICAL AND FACILITY SERVICE SKILLS

1.	Bookkeepers, Bkpg. Machine Operators, Tabulating Machine Operators	7
2.	Duplicating Machine Operators	4
3.	General Office Clerks	92
4.	Janitors, Porters, Messengers	48
5.	Mail and Postal Clerks	12
6.	Material and Inventory Clerks, Stock Chasers, Expediters	26
7.	Stenographers	13
8.	Timekeepers, Accounting Clerks, Payroll and Disbursement Clerks	11
9.	Typist Clerks	19
10.	Stock Tool Clerks, Storekeeper, Shipping and Receiving Clerks	65
	TOTAL	1271

TABLE II

NON- VETERANS

1.	Auto Mechanics, etc.	15
2.	Carpenters	62
3.	Carpenter Helpers	26
4.	Electricians	45
5.	Electrical Motor Repairmen	20
6.	Foremen, all types	37
7.	Machinists	39
8.	Machine Shop Workers (Operators of one type machine)	0
9.	Maintenance Mechanics	15
10.	Painters	36
11.	Pipefitters	60
12.	Plumbers and Steamfitters	14
13.	Sheet Metal and Coppersmiths	30
14.	Structural Steel Workers	32
15.	Welders, all types	81
	TOTAL	512



BLUETHENTHAL AIRPORT——WILMINGTON, NORTH CAROLINA

Projected operations base buildings for State Airlines including 130'x160' steel and concrete hangar, warehouses, shops and office space equipped with all necessary fixtures. Available to base buildings is a sixteen and one-half acre concrete parking apron.

BLUETHENTHAL AIRPORT ——WILMINGTON, NORTH CAROLINA

Three seven-thousand foot runways, with one-thousand feet clearance at the end of each runway. This is the only airport on the new feeder system that is absolutely free of ground snow and ice.

18. Board's Opinion of October 13, 1947, Vol. 24.

Vol. 24 [R. 12917]
E-873

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Served:

DOCKET No. 501 ET AL.[1]

SOUTHEASTERN STATES CASE

Decided: October 13, 1947

Certificate of public convenience and necessity of Pennsylvania-Central Airlines Corp., for route No. 51, amended to include Charlotte, N. C., as an intermediate point.

Certificate of public convenience and necessity of Eastern Air Lines, Inc., for route No. 5, amended to include Augusta, Ga. (subject to condition) and Dothan, Ala. (subject to condition) as intermediate points; certificate for route No. 10 amended to include Columbus, Ga. (subject to condition) and Macon, Ga. (subject to condition) as intermediate points on the Atlanta-Tallahassee leg of route No. 10, and to include Bowling Green, Ky., as an intermediate point between Nashville, Tenn., and Louisville, Ky.

Route awarded to Piedmont Aviation, Inc., amended to include Middlesboro-Harlan, Ky., and London-Corbin, Ky., as intermediate points between Bristol, Va., and Lexington, Ky.

Petition of State Airlines, Inc., for reargument and reconsideration, granted in part.

Petitions for rehearing, reargument, and reconsideration, denied in all other respects.

Petitions for leave to intervene denied.

[1]This proceeding includes numerous other dockets specifically set forth in the original opinion of the Board, *Southeastern States Case*, Docket No. 501, et al., decided April 4, 1947.

Appearances:

Same as set forth in the original opinion of the Board, Southeastern States Case, Docket No. 501, et al., decided April 4, 1947.

[R. 12918]

SUPPLEMENTAL OPINION

BY THE BOARD:

The Board, on April 4, 1947, issued its opinion in the *Southeastern States* case, Docket No. 501, et al., establishing new and additional air transportation services in the southeastern portion of the United States. Petitions for rehearing, reargument, and/or reconsideration, have been filed by All American Aviation, Inc., Blue Grass Airlines, Commonwealth Air Transport, Inc., Gillespie Airways, South East Airlines, Inc., Southern Aviation Corporation, State Airlines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Augusta, Ga., Charlotte, N. C., Campbell Co., Ky., Chattanooga, Tenn., Evansville, Ind., Greenville, S. C., Memphis, Tenn., Norfolk, Va., Spartanburg, S. C., Sheffield, Ala., and Wilmington, N. C. Numerous petitions have also been filed by public bodies and civic organizations who were not parties to the proceeding.[2] These organizations now seek permission to intervene so as to be in a position to ask the Board for rehearing, reargument, and reconsideration.

Commonwealth, Gillespie, and Southern Aviation assert, among other things, that the Board's opinion was in error

[2]Such petitions were filed by the City of Covington, Ky., Chamber of Commerce of Columbia, Tenn., Chamber of Commerce of Charleston, W. Va., City of Dyersburg, Tenn., Chamber of Commerce of Hazard, Ky., City and County of Harlan, Ky., City of Hazard, Ky., Kanawha Coal Operators' Association, Kentucky Municipal League, Kentucky Chamber of Commerce, Kentucky Aeronautics Commission, City of Middlesboro and Bell County, Ky., Chamber of Commerce of Memphis, Tenn., City of Mt. Pleasant, Tenn., City of Newport, Ky., City of Pikeville, Ky., Tennessee Bureau of Aeronautics, City of Welch, W. Va., and the Pitt County-City of Greenville Airport Commission.

because it failed to make adequate findings on the need for
[R. 12919]
local and feeder service in Kentucky and Tennessee. In our prior opinion, we recognized a need for additional service in the Kentucky-Tennessee area and included various cities in this area as intermediate points on the routes of Eastern, TWA, PCA, and Delta.[3]

In determining the need for local or feeder service in the southeastern portion of the United States, careful consideration was given to all of the facts of record bearing upon the needs of the entire southeastern area. Our study of this evidence led us to the conclusion that two separate feeder services are required by the public convenience and necessity in the southeastern area; i.e., one connecting various cities in the southern states of Mississippi, Alabama, Georgia, and South Caroilna, and the other providing service in the Carolinas and Virginia, and extending westward to Louisville and Cincinnati. These two feeder systems were selected because on the basis of population, community of interest, prospective traffic, revenues and cost to the government, we concluded that further experimentation in feeder service, in addition to the thirteen feeder systems which we had already authorized, was warranted in the areas to be served by these systems.[4] The systems and areas previously selected by the
[R. 12920]
Board in this and other proceedings will provide opportunity for wide experience and experimentation in the conduct of local-feeder service under varying conditions in different sections of the country.

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[3]Louisville was added as an intermediate point on TWA's route No. 58, Ashland and Owensboro were added to Eastern's route No. 47, Chattanooga was added to Delta's route No. 54 connecting that city for the first time with direct service to Lexington-Frankfort and Covington-Cincinnati, Chattanooga was also provided with PCA's east-west service on route No. 51, the Cincinnati-Covington area was connected with North Carolina and Virginia by a new feeder system, and Louisville and Lexington-Frankfort were connected by a feeder route with North Carolina.

[4]Since our original opinion, additional local-feeder service has been authorized in the *Great Lakes Area* case, Docket No. 535, et al., decided September 3, 1947.

We did not authorize a separate local feeder service in Kentucky and Tennessee because, in our judgment, the need for further experimentation in local-feeder service and the prospect of financial success of such a service in this area were not demonstrated by the record. This should not be taken as an indication that the establishment of local feeder service in this area may not be forthcoming at some future date. We have pointed out in previous opinions that we would establish a reasonable amount of local service throughout the United States on an experimental basis, and in authorizing this type of service we have limited the certificates issued to a temporary or experimental period of three years. This will permit the development of actual traffic experience to be used as a guide in making any future additions to the service which may be warranted. It is entirely possible that after operations are commenced over the various feeder systems established in this and other cases, we might find it desirable to extend one or more of the local or feeder routes to provide service for the Kentucky-Tennessee area. In the meantime we have reviewed the evidence of record bearing upon the need for local or feeder service in this area, and we believe that it would be in the public interest to modify the route awarded to Piedmont in order that the benefit of local or feeder service may be provided to some of the communities in Kentucky which are located in the general area to be served by the route awarded to Piedmont.*

Harlan, Kentucky, is the leading coal producing city of the state, and is the county seat of Harlan county which led state coal production in 1944 with a total volume of over 13,000,000 tons. The city has no air service at the present time, the nearest airline stop being Bristol, Tenn., a distance

[R. 12921]

of 94 miles. Middlesboro, whose chief industry is coal mining, is the trading center and largest town of southeastern Kentucky. It had a 1940 population of approximately 12,000.

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*As will hereinafter appear, the question of selection of Piedmont or State to operate this route has been assigned for reargument and reconsideration.

The principal industries for the Middlesboro-Harlan area are coal, lumber, mining machinery, flour, tobacco, and electrical equipment. Middlesboro has no air service, and the nearest airline stop is at Knoxville, a distance of 66 miles. The Middlesboro-Harlan trade area includes a population of approximately 200,000 persons.

London, the county seat of Laurel County, is a shopping center for surrounding miners and corn and tobacco farmers. Corbin is a rail center, one of the three major supply points for the Louisville and Nashville Railroad. Corbin has no air service, and the nearest airline stop is Knoxville, a distance of 96 miles. Leading industries in this area are coal, machinery, tobacco, grain, textiles, and lumber. With little additional mileage, the route awarded to Piedmont can be amended to include Middlesboro-Harlan and London-Corbin. From our further study of the record, we find that the public convenience and necessity require that the route awarded to Piedmont be amended to include Middlesboro-Harlan and London-Corbin as intermediate points between Bristol, Va., Tenn., and Lexington, Ky.

The record also shows a need for air service at Bowling Green, the county seat of Warren county and one of the foremost tobacco and strawberry markets in the state of Kentucky. The city has a trade-area population of over 100,000 persons. Located there are Western Kentucky State Teachers College and Bowling Green Business University, the largest business school in the state. At the present time, the city has no air service, the nearest airline stop being Nashville, a distance of 65 miles. Eastern presently flies directly over Bowling Green on its route No. 10 between Louisville and

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Nashville, and service to this city could be provided with no additional mileage. While Eastern did not specifically apply to serve Bowling Green, its application contained a catch-all clause seeking service to any city the Board may designate. Accordingly, we find that the public convenience and necessity require the inclusion of Bowling Green as an intermediate point on Eastern's route No. 10 between Louisville and Nashville.

In addition to raising the issue with respect to local service in Kentucky and Tennessee, the petitions of Commonwealth, Gillespie, and Southern Aviation make reference to the catch-all clause of their applications, and point out that they should be considered as possible applicants to operate the local or feeder service hereinbefore found required. Commonwealth asks the Board to deny a certificate to Piedmont with respect to Asheville, Winston-Salem, Louisville, and Cincinnati service, contending that the issuance of a temporary service to Piedmont over this route is outside the scope of Piedmont's application. All American has also filed a petition asking that the Board limit the authority of Piedmont on its Cincinnati-Norfolk route to the operation of a route only between Charleston, W. Va., and Norfolk. In the alternative, All American asks that it be granted authority to operate the Cincinnati-Norfolk route, or that decision with respect to such a route be deferred until decision is reached in the Middle Atlantic case. All American points out that while the Board's opinion recognizes that the carrier was willing to offer passenger service, it did not consider All American as an eligible applicant for the route awarded to Piedmont, or as a possible choice for operation of a Cincinnati-Norfolk route. The petition of State Airlines alleges generally that the Board exceeded its jurisdiction in

[R. 12923]

awarding Piedmont routes not applied for, and that the public interest requires the selection of State rather than Piedmont to operate those routes.

As we stated in our original opinion, the choice between State Airlines and Piedmont Aviation presented a close and difficult question. After consideration of State's petition, and in order that the Board may be in a better position to determine whether the choice between State and Piedmont was the correct one, State's petition will be granted in so far as it requests reargument and reconsideration.[5] The

[5]On July 18, 1947, State filed with the Court of Appeals for the District of Columbia a petition for review of the Board's order selecting Piedmont to conduct local-feeder service. On September 3, 1947, State's petition was dismissed by the court as premature.

issue upon the argument will be limited to two questions only: (1) whether the public interest requires the selection of State or Piedmont, and (2) whether the Board committed legal error by awarding the route to Piedmont. Argument on these issues will be received only from State and Piedmont. [R. 12924]

We have also examined the petitions of Commonwealth, Gillespie, Southern Aviation, and All American, and have come to the conclusion that our prior opinion was correct in denying these applications irrespective of whether Piedmont or State is selected to operate the routes hereinbefore found rquired. As pointed out in many of our prior opinions, the operation of local or feeder services should be entrusted to individuals whose interests are centered in the area to be served. The record shows that Gillespie and Southern Aviation have their headquarters in Tennessee. The principal officers of Commonwealth are located in Cincinnati. Moreover, Commonwealth is not an operating organization. On the other hand, Piedmont and State have been actively engaged in various phases of aeronautics in the area to be served for a number of years. Piedmont's principal offices are located at Winston-Salem, while State has its operating base at Charlotte. Our study of the record, particularly in the light of the petitions for reconsideration, leads us to the conclusion that the comparative public interest narrows the choice of carrier to either Piedmont or State. Under the circumstances, the petitions of Commonwealth, Gillespie, and Southern Aviation will be denied. Likewise, we find no merit in All American's claim that it should be considered as an applicant for passenger service over all or a portion of the routes hereinbefore found required. As pointed out in our previous opinion, the primary need of the area, which is for passenger and improved mail service, can best be rendered in connection with a passenger, property, and mail service. All American presented no evidence relating to passenger service, had no general prayer in its application, and limited its offer to carry passengers, which was first made through a witness during the course of the hearing, to

combination passenger-property-mail pick-up service.[6] On [R. 12925] the basis of the facts of record, we conclude that the comparative public interest requires the selection of either Piedmont or State to operate the routes under consideration rather than All American. Accordingly, All American's petition will be denied.

After considering the other petitions filed with the Board, including those filed by persons seeking to intervene in this proceeding, we conclude that these petitions raise no new issues which were not previously considered by the Board, and should be denied, except as hereinafter provided:

A reconsideration of the record shows that Charlotte should be included as an intermediate point on PCA's route No. 51 between Winston-Salem and Hickory, N. C. Charlotte, with a metropolitan district population of approximately 113,000, is the largest city in the Carolinas, and is the leading industrial and financial center in that area. The importance of Charlotte as a financial center is demonstrated by its annual bank clearances in excess of one billion dollars. Charlotte's prominent position in the textile world gives this city a substantial community of interest with Memphis. It also has a strong community of interest with Norfolk. On the basis of outgoing telephone calls from Charlotte to Norfolk during the months of March and October, 1944, it is estimated that over 13,000 calls are made annually from Charlotte to Norfolk. Based on a count of average daily outgoing calls from Norfolk to Charlotte for the six-day period ended March 10, 1944, it is estimated that over 8,000 calls are made annually from Norfolk to Charlotte. Hotel registrations at Charlotte and Norfolk also indicate a substantial community of interest between these cities. There is presently no one-carrier air service between Charlotte and Norfolk, service [R. 12926] being provided by connections between Eastern and PCA at

[6] Subsequent to our original decision in this proceeding, the Board has denied a similar request of All American for combination passenger and property pick-up service on the basis of safety considerations (Decided Aug. 7, 1947, Order Serial No. E-744, Docket No. 2366).

Greensboro-High Point or Raleigh. Surface transportation is slow, requiring approximately 14 hours by either rail or bus. The addition of Charlotte as an intermediate point on route No. 51 will provide that city with first direct one-carrier service to Memphis and Norfolk, and also provide that city with competitive service to Winston-Salem, Greensboro, Raleigh-Durham, Richmond, and Washington, cities with which Charlotte has a substantial community of interest. In our original opinion we recognized that the addition of Charlotte would divert some traffic from Eastern. However, upon further consideration we have concluded that this diversion is not so serious as to outweigh the benefits to be derived from the addition of Charlotte to PCA's system. Accordingly, we find that the public convenience and necessity require the inclusion of Charlotte as an intermediate point on PCA's route No. 51 between Winston-Salem and Hickory.

Augusta, the third largest city in Georgia, had a 1940 population of 87,809, an increase of 45 percent over 1930. The University of Georgia School of Medicine is located in the city, and operating in connection with it are the University Hospital and the Wilhenford Tubercular Hospital. Augusta is also the home of Veteran's Hospital No. 62, and the United States Army Oliver General Hospital. Within the corporate limits of Augusta in 1939 there were 100 manufacturing establishments, producing goods valued at $40,000,000. Augusta is the largest manufacturer of brick and hollow tile in the south. Other industries include the production of jute bagging, cotton seed oil processing, the production of kaolin, fertilizer, lumber, candy, and bedding. Augusta's annual payroll for 1943, as estimated by the Chamber of Commerce, was about $50,000,000, and bank

[R. 12927]

clearances in that year amounted to $118,486,043, an increase of 135 percent over 1934. Evidence presented by Eastern and the city of Augusta shows that Augusta has a substantial community of interest with cities served by Eastern and particularly with Washington, New York, Philadelphia, and Boston. In addition to the lack of direct air service to the

northeast, Augusta is poorly situated with respect to through rail transportation. The inclusion of Augusta will provide that city with direct one-carrier service for the first time to many cities with which it has a substantial community of interest. Eastern applied for Augusta as an intermediate point on route No. 6. This would create competition with Delta between Augusta on the one hand and the cities of Columbia, Savannah, Jacksonville, and Miami on the other. Although the addition of Augusta to Eastern's route No. 5 would duplicate portions of Delta's routes, Delta will be protected from serious diversion by restrictions which we will impose against service by Eastern between Augusta and Greenville or Spartanburg and permitting Eastern to serve Augusta only on through flights originating or terminating at New Orleans and New York or points beyond. While Eastern has not specifically applied to serve Augusta on route No. 5, its application has a so-called catch-all clause which is sufficiently broad to permit Augusta to be included as a point on that route. We find, therefore, that the public convenience and necessity require the inclusion of Augusta as an intermediate point on Eastern's route No. 5 between Atlanta and Anderson, S. C., subject to the conditions that Augusta and Greenville, and Augusta and Spartanburg, shall not be served on the same flight, and that Augusta shall be served only on flights originating or terminating at New Orleans, La., or points beyond, and at New York or points beyond.

[R. 12928]

Columbus, Georgia, had a 1940 metropolitan population of 97,353. It is the second largest cotton manufacturing city in the south, and in 1940 there were 125 manufacturing establishments in the city employing approximately 20,000 workers, paying wages of about $15,000,000 annually, and having products valued at $75,000,000 annually. Macon, Ga., had a 1940 population within a radius of 25 miles of 154,021. There are approximately 40 branch offices of the Federal Government located in Macon, as well as several colleges and universities. Macon is the center of Georgia's vast peach growing industry, and there are approximately 175 manufacturing

plants in the Macon area. While our previous decision in this proceeding provided additional service for Columbus and Macon, it did not afford Columbus direct one-carrier service to Tallahassee, Tampa, and Miami, nor did it provide Macon with service to Albany. Eastern can provide this service with slight additional flight mileage, and with no additional cost for station facilities since it is already established in these cities. Accordingly, we find that the public convenience and necessity require the inclusion of Columbus and Macon as intermediate points on Eastern's route No. 10 between Atlanta and Albany, subject to conditions that Columbus and Macon shall not be served on the same flight, and that Columbus and Albany shall not be served on the same flight.

Dothan, the leading city in southeastern Alabama, had a 1940 population of 17,194. The population of Dothan's retail trading zone was estimated at 300,000 in 1940. The city is an agricultural as well as an industrial center, and buyers of winter vegetables visit Dothan from the markets of the northeast throughout the winter season. Dothan, because of its strategic location, is also a distributing center for In-

[R. 12929]

diana flour mills, Shell, Texaco, Standard Oil, Gulf, and Pan American petroleum products. A large packing company operates a meat packing plant in the city and distributes its products to all parts of the south. The record shows Dothan's principal community of interest to be with Atlanta, Birmingham, Columbus, New York, Mobile, New Orleans, and Washington, D. C., cities served by Eastern. In view of the foregoing considerations, we find that the public convenience and necessity require the inclusion of Dothan as an intermediate point on Eastern's route No. 5 between Montgomery and Pensacola. However, in order to prevent the diversion from National's New Orleans-Florida service that might result from the operation by Eastern of through flights between New Orleans and Florida points via Dothan, we will impose a restriction on Eastern's service to Dothan, on its route No. 5, by providing that Eastern shall serve Dothan only on flights originating or terminating at Atlanta, Ga., or a point north thereof.

Eastern's petition also contends that the Board failed to consider its proposal to extend route No. 47 from Charleston, W. Va., to Norfolk, via Roanoke, Lynchburg, and Richmond. Eastern takes the position that the award of the Cincinnati-Norfolk route to Piedmont denied it a fair hearing. The city of Norfolk, an intervener, also requests reconsideration insofar as the Board's opinion failed to provide Norfolk with one-carrier trunkline service to cities to the west such as Cincinnati and St. Louis. The question of providing service between Charleston, W. Va., and Norfolk was first considered by the Board in the *Great Lakes to Florida* case[7] in connection with various applications for service between Chicago and Norfolk, or between Cincinnati and Norfolk via Charleston, Roanoke, Lynchburg, Richmond, and other intermediate [R. 12930] points. In that opinion, the Board found a need for air service between Charleston, Roanoke, Richmond, Lynchburg, and Norfolk, but deferred decision with respect to this issue for further consideration in the *Southeastern States* case, recognizing the predominately local nature of the traffic between these cities.

In considering this question in the *Southeastern States* case, the Board found that the evidence of record again demonstrated a need for local service between Charleston and Norfolk via Roanoke, Lynchburg, and Richmond, and other intermediate points, and that the route should be extended from Charleston to Cincinnati via Ashland-Huntington and Portsmouth. The record shows that in 1933 there were 1,428 rail passengers between Charleston, W. Va., and Richmond, 7,789 between Roanoke and Richmond, 7,666 between Roanoke and Norfolk, and 61,769 between Richmond and Norfolk. We concluded therefore that in view of the predominately local nature of the traffic over the Charleston-Norfolk segment of the route the public interest would be better served if this route were operated as a part of the local or feeder system established in the Piedmont area than by a trunkline operator. Under the circumstances, the applications of Eastern, PCA, and Delta seeking Chicago-Norfolk or Cincinnati-Norfolk

[7] *Eastern A. L., et al., Great Lakes-Florida*, 6 CAB 429 (1945).

service, which were deferred in the *Great Lakes to Florida* case, were denied.

Eastern's contention that the Board failed to consider its proposal to extend route No. 47 from Charleston to Norfolk is incorrect. We recognize that the extension of Eastern's route No. 47 to Norfolk would provide the cities of Roanoke, [R. 12931] Lynchburg, Richmond, and Norfolk with one-carrier service to points on Eastern's route No. 47. However, as stated in our prior opinion, travel over the Charleston-Norfolk segment is predominately local in character, and the primary need of these communities for air service is for a local or feeder route providing connections between each of these cities. Under the circumstances, we find that the public interest will be better served by the authorization of local or feeder service between Charleston and Norfolk than by the extension of Eastern's route No. 47. Accordingly, the petitions of Eastern and the city of Norfolk will be denied.

Upon the basis of the foregoing findings and conclusions and all the facts of record, we find:

1. That the public convenience and necessity require:

a. That the certificate of public convenience and necessity of Pennsylvania-Central Airlines Corporation for route No. 51 should be amended to include Charlotte, N. C., as an intermediate point between Hickory and Winston-Salem, N. C.

b. That the certificate of public convenience and necessity of Eastern Air Lines, Inc, for route No. 5 should be amended to include Dothan, Ala., as an intermediate point between Montgomery, Ala., and Pensacola, Fla., subject to the condition that Dothan shall be served only on flights originating or terminating at Atlanta, Ga., or a point north thereof, and to include Augusta, Ga., as an intermediate point between Anderson, S. C., and Atlanta, Ga., subject to the condition that Augusta and Greenville, S. C., shall not be served on the same flight, that Augusta and Spartanburg, S. C., shall not be served on the same flight, and that Augusta

shall be served only on flights originating at New Orleans, La., or a point west thereof and terminating at New York, [R. 12932]
N. Y., or a point north thereof, or originating at New York, N. Y., or a point north thereof and terminating at New Orleans, La., or a point west thereof; that the certificate of Eastern for route No. 10 should be amended to include Columbus, Ga., and Macon, Ga., as intermediate points on the Atlanta-Tallahassee leg of route No. 10, subject to the conditions that Columbus and Macon shall not be served on the same flight, and that Columbus and Albany shall not be served on the same flight, and to include Bowling Green, Ky., as an intermediate point on said route between Nashville, Tenn., and Louisville, Ky.

c. That the route awarded to Piedmont Aviation, Inc., should be amended to include Middlesboro, Harlan, Ky., and London-Corbin, Ky., as intermediate points between Bristol, Va., and Lexington, Ky.

2. That Pennsylvania-Central Airlines Corporation, Eastern Air Lines, Inc., and Piedmont Aviation, Inc., are fit, willing and able to perform properly the transportation herein authorized, and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder.

3. That that portion of the petition of State Airlines, Inc., requesting reargument and reconsideration insofar as said order failed to award to State Airlines, Inc., the authority granted to Piedmont Aviation, Inc., should be granted to the extent of hearing argument by State and Piedmont, said argument to be limited to the questions of (a) whether the public interest requires the selection of State or Piedmont, and (b) whether the Board committed legal error by awarding the route to Piedmont; and

4. That the petitions for rehearing, reargument, and reconsideration should be denied in all other respects.

[R. 12933]

5. That the petitions for leave to intervene should be denied.

An appropriate order will be entered.

Landis, Chairman, and Branch, Member, concurred in the above opinion. Landis, Chairman, and Young, Member, filed the attached separate concurring opinions. Lee, Member, filed the attached concurring and dissenting opinion. Ryan, Vice Chairman, did not take part in the decision.

[R. 12934]

LANDIS, Chairman, Concurring:

Although I concur in the modifications made in the decision in the Southeastern States Case, I wish to add a few words on the situation in which the State of Kentucky is left. The inclusion of Middlesboro and London-Corbin on the route tentatively assigned to Piedmont is a wise decision. Harlan can for the time be served through Middlesboro and I understand that a movement is afoot to create a joint and adequate airport between the two towns. Service to these points will enable us to learn concretely the traffic potentials present in this fairly unaccessible coal region of eastern Kentucky. If traffic does develop and airports become available, points such as Hazard and Pikeville can readily be given service to Lexington, Louisville and Cincinnati by their inclusion on this carrier's route.

The problem of service to western and central Kentucky is a different one. The inclusion of Bowling Green as an intermediate point on Eastern's route between Louisville and Nashville will be of some help. But Eastern cannot be expected to provide much service to Bowling Green. Probably it will receive about one schedule a day in each direction such as Chicago & Southern now provides Paducah. Despite the fact that only this meager service was provided in the month of September, 1946, Paducah produced 359 passengers.

[R. 12935]

It seems impossible, however, in this case to create an additional feeder system to serve the needs of this western and central Kentucky area which will have a route system of sufficient inherent strength to justify the experiment. The needs of this area seems to me to center about the territory bounded by Louisville, Nashville, Memphis and Paducah. Cities such as Madisonville, Evansville and Owensboro need connections with each other and with Louisville on the one hand and Paducah on the other. This need might, perhaps, be met by the extension of the Turner System created in the Great Lakes Case, a case that is still before us on reconsideration. There is another general need and that is a connection between the Paducah territory and St. Louis and Nashville. This need can be considered in the Mississippi Valley Case which involves among other things the provision of service between St. Louis and Memphis via river points. Such an extension would give service to western Tennessee points as well. A solution of this character would do much for the western section of Kentucky and might possibly strengthen the awards made or that may be made to other feeder systems. But I agree that in this case we have done all that we can now do.

/s/ J. M. LANDIS

[R. 12936]

YOUNG, Member, Concurring:

While I am in agreement with the actions taken herein, I do not wish to be understood as having reached any different conclusions with respect to the original awards made in this proceeding than were expressed in my earlier dissenting opinion.

It is still my conviction that the public interest does not require (1) the establishment of either of the new local service systems which have been authorized, or (2) the route extensions granted to PCA. However, a majority of the Board found that these services should be installed, and since the additions provided for herein should increase in some

measure their value to the public, I am not disposed to disagree.

As to the other aspects of this supplemental opinion, I concur without qualification.

/s/ CLARENCE M. YOUNG

[R. 12937]

MEMBER LEE, Concurring and Dissenting:

I do not agree with the majority's conclusion that local or feeder service is not required in the Kentucky-Tennessee area. Public counsel and the examiners have recommended local-feeder service for this area, and my study of the record substantiates their conclusions.

The record shows that both the railway and highway transportation facilities in the Kentucky-Tennessee area are inadequate to meet the present and future needs of this area. The dominant direction of early trade between the north and south resulted primarily in a north-south pattern of railroad building in the region from the Appalachians to the Mississippi. As a result, north and south rail service in this region is generally satisfactory; but no single rail carrier serves the State from east to west. Eastern Kentucky is served by the coal-carrying lines of the Chesapeake & Ohio and the Louisville and Nashville Railroads. The lines of the Louisville and Nashville run south from Cincinnati to Nashville and to Atlanta with only one east-west connecting line in southern Kentucky.

On the basis of rail mileage per 1,000 square miles of territory, Kentucky is exceeded by all her neighbors except Tennessee. Tennessee has only 84 miles of railroad per 1,000 square miles, Kentucky 89, whereas Virginia, West Virginia, Indiana, Ohio and Illinois have 104, 158, 190, 206, and 212 miles each, respectively. Large areas of Kentucky have no rail service at all. In the central southeastern section there is a group of seven counties without any railway mileage. There are eleven other counties without rail service, most of

them in the eastern hill section, and three others are touched only at a corner. Thirty-three county seats have no rail connections; fourteen others are served only by branch lines.

[R. 12938]

Kentucky's inadequate railway service makes it singularly dependent on highway transportation. Kentucky's policy has been to provide some type of improved surface roads to as many communities as possible. With large funds needed to maintain its extensive mileages of lightly surfaced roads, less was available to construct the high-type paved highways. As a result, Kentucky has 52 miles of high-type paved road per 1,000 square miles of territory, whereas the neighboring states of Missouri, Tennessee, West Virginia, Virginia, Indiana, Illinois, and Ohio have 55, 69, 84, 104, 144, 172, and 183 miles each, respectively. This State's topography, plus the policy of surfacing maximum mileages with minimum of outlay, leave Kentucky's highway routes with many grades and curves that impede easy and rapid highway travel.

The majority has concluded that the economic characteristics of the Kentucky-Tennessee area may not be sufficient to support a local or feeder system. I cannot agree with this conclusion. The largest bituminous coal area in the United States lies in eastern Kentucky, southern West Virginia, southwestern Virginia, and northeastern Tennessee. Cincinnati is the largest bituminous coal market in the world. Ashland, Huntington, Charleston, Knoxville, Louisville, and Lexington all have a close community of interest with this coal producing area. To the west of Kentucky is St. Louis, and to the south Nashville, centers of large trade areas with strong trade and travel connections with Kentucky. Within Kentucky are large centers of population, including Frankfort, the Commonwealth's capital, and Lexington, the seat of its university, which require more rapid and convenient transportation connections to satisfy present-day needs. In addi-

[R. 12939]

tion, tobacco, coal, and textile industries have created close economic ties between Cincinnati, Louisville, and Lexington

on the one hand, and certain cities of North Carolina on the other.

It is recognized that the populations of many of the cities in the Kentucky-Tennessee area are small. However, it should be pointed out that the size of the cities should not be accepted as the total populations to be served by those proposed stops. Many of the counties in this area range in size from 400 to 500 square miles, roughly approximating the area of a circle within a twelve and a half mile radius. Thus, stops within county areas, and many are centrally located, can well serve the total county population. With one or two exceptions, the counties having the smaller cities, all have populations in excess of 25,000.

As an indication of the need for improved air mail service in the Kentucky-Tennessee area, exhibits were submitted showing that a very small percentage of mail dispatched and received at noncertificated points in this area is air mail. Typical of the low ratio of air mail to total first-class mail is that shown for the city of Harlan where for the period April 1-7, 1945, a total of 4,730 pieces of first-class mail was dispatched and 4,193 pieces were received, whereas only 120 pieces of air mail were dispatched and 59 were received for the same period. Data for the city of Hazard show for the same period a daily average of 3,000 pieces of first-class mail were dispatched and 4,500 were received, whereas only 98 pieces of air mail were dispatched and 200 were received. This is ascribed to the isolation of these points due to the long elapsed time for surface trans-

[R. 12940]

portation between cities in the area without air service and cities now having air mail service, making the use of air mail from noncertificated points of little benefit.

As previously pointed out, most of the noncertificated points in this area range in population from 10,000 to 15,000, or under. I do not believe this to be a decisive feature in denying local or feeder air service to these communities. While generally speaking, cities of 10,000 or less are not

likely to generate any substantial amount of air traffic, there are special reasons why this conclusion may not necessarily be true with respect to cities in the Kentucky-Tennessee area. As hereinbefore stated, the cities in this area have the entire county populations upon which to draw support for air service, but most important of all is the fact that a majority of the cities are especially handicapped in surface transportation, and a number of the communities are suffering from extreme isolation.

The record is replete with evidence on the inadequacy of surface transportation in this area. Existing rail and bus time between Bowling Green and Lexington is more than 7 hours for a distance of approximately 200 miles, while the proposed air time is only 1 hour and 35 minutes. Rail schedules between Madisonville and Lexington require 12½ hours, while proposed air time is less than 4 hours. Between Paducah and Lexington the rail and bus time is 11 hours 23 minutes, and 12 hours 40 minutes, respectively, while the proposed air time is 3 hours 13 minutes. Between Paducah and Louisville, the rail time is 6 hours 40 minutes and the bus time 8 hours 40 minutes, while the proposed air time is 1 hour 42 minutes. Between Paducah and Nashville, the

[R. 12941]

rail time is 6 hours 45 minutes and the bus time is 8 hours, while the proposed air time is less than 1 hour. These are just a few of the inadequacies of surface transportation in the Kentucky-Tennessee area and are typical of the surface transportation generally throughout this area.

The Board's prior opinion in this case took care of some of the needs of this area by providing additional trunk-line service to some of the larger cities, and by extending the local or feeder system from North Carolina and Virginia as far west as Louisville and Cincinnati. The majority's decision in this supplemental opinion to include Middlesboro-Harlan and London-Corbin as intermediate points on the route awarded to Piedmont will provide a much needed local service to these communities, but falls short of adequately meeting the requirements for air service in the

Kentucky-Tennessee area. In my opinion, the public convenience and necessity require additional local or feeder routes I would authorize a route from Birmingham, extending northward to Decatur and Huntsville, Ala., and Columbia, Tenn., to Nashville. A route should be authorized from Nashville to Bowling Green and Lexington, and service should also be provided between Nashville, Clarksville-Hopkinsville and Paducah, and from Paducah to Madisonville, Owensboro, Louisville, and Bowling Green, and extending westward back to Paducah via Clarksville-Hopkinsville. These routes could be operated as part of one of the local or feeder systems established in the Board's prior opinion in this case—that is, either a part of Southern or a part of Piedmont, or both, or a new carrier could be selected to

[R. 12942]

provide this service. Gillespie Airways, Commonwealth Air Transport, Inc., Blue Grass Airlines, and Southern Aviation Corporation, have proposed extensive new services in this area, and any one of them could properly conduct the proposed operations. Another possibility of providing local-feeder service for Kentucky and Tennessee is for the Board to reopen the Great Lakes Area case on its own motion with a view toward extending either Parks or Turner into the Kentucky-Tennessee area. Parks has requested authority to conduct operations from Evansville to Owensboro, Hopkinsville, Clarksville, and Nashville, while Turner sought authority to operate from Evansville to Memphis via Owensboro, Hopkinsville, Paducah, Cairo, Mayfield, Union City, Dyersburg, and Jackson. Any of these alternatives would provide a satisfactory method of establishing local service in Kentucky and Tennessee, a service which, in my opinion, is required by the public convenience and necessity.

/s/ JOSH LEE

[R. 12943]

Orders
Serial Number E-873

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 13th day of October, 1947.

In the matter of the application of AERO PICKUP SERVICE CORPORATION and other applicants for certificates of public convenience and necessity, known as THE SOUTHEASTERN STATES CASE	Docket No. 501 et al.

ORDER

A full public hearing having been held in the above-entitled proceeding;

The Board, upon consideration of the record, having issued its opinion April 4, 1947 (Order Serial No. E-435), containing its findings, conclusions, and decisions, and in accordance with said opinion having issued amended certificates of public convenience and necessity, and selected certain applicants to engage in air transportation over certain designated routes subject to further showings as to the adequacy of airport facilities;

Petitions for rehearing, reargument, and/or reconsideration having been filed by Delta Air Lines, Inc., City of Char-

lotte, N. C., Bluegrass Airlines, All American Aviation, Inc., City of Augusta, Ga., Sheffield, Ala., Campbell County, Ky., Commonwealth Air Transport, Inc., Gillespie Airways, Eastern Air Lines, Inc., Southern Aviation Corporation, and State Airlines, Inc.;

Petitions for reconsideration having been filed by City of [R. 12944]
Evansville, Ind., City of Chattanooga, Tenn., City of Spartanburg and Spartanburg Chamber of Commerce, S. C., South east Airlines, Inc., Greenville, S. C. Chamber of Commerce, City of Memphis, Tenn., City of Norfolk, Va.;

Petitions for leave to intervene and for rehearing, reargument and/or reconsideration having been filed by the Kentucky Chamber of Commerce, Kentucky Municipal League, City of Covington, Ky., City of Newport, Ky., City of Pikeville, Ky., Chamber of Commerce of Hazard, Ky., City and County of Harlan, Ky., City of Hazard, Ky., Kanawha Coal Operators Association, City of Middlesboro and County of Bell, Ky., City of Welch, W. Va., City of Dyersburg, Tenn., Chamber of Commerce of Memphis, Tenn., Chamber of Commerce of Charleston, W. Va., Tennessee Bureau of Aeronautics, Pitt County-City of Greenville Airport Commission and Greenville Chamber of Commerce, S. C., City of Mt. Pleasant, Tenn., Airport Committee of the Columbia, Tenn. Chamber of Commerce, and the Kentucky Aeronautics Commission;

A petition for leave to intervene having been filed by the Chamber of Commerce of Hickory, N. C.;

A petition having been filed by the City of Wilmington, N. C., in support of the petition of State Airlines, Inc., and in opposition to the petition of Delta Air Lines, Inc.;

The Board having reconsidered the entire record in said proceeding and upon reconsideration of said record having issued its supplemental opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

[R. 12945]

IT IS ORDERED:

1. That amended certificates of public convenience and necessity in the forms attached hereto, shall be issue to Eastern Air Lines, Inc., for Routes Nos. 5 and 10, and to Pennsylvania-Central Airlines Corporation for Route No. 51;

2. That said amended certificates shall be signed on behalf of the Board by its Chairman, shall have affixed thereto the seal of the Board attested by the Secretary, and shall be effective on the date of this order;

3. That the route awarded to Piedmont Aviation, Inc., pursuant to paragraph 10 of the Board's order Serial No. E-435, dated April 4, 1947, be amended to include Middlesboro-Harlan, Ky., and London-Carbin, Ky., as intermediate points between Bristol, Va., and Lexington, Ky.;

4. That that portion of the petition of State Airlines, Inc., requesting reargument and reconsideration with respect to the Board's decision and order Serial No. E-435, dated April 4, 1947, insofar as said order failed to award to State Airlines, Inc., the authority granted to Piedmont Aviation, Inc., is granted to the extent of hearing argument by State and Piedmont, said argument to be limited to the questions of (a) whether the public interest requires the selection of State or Piedmont, and (b) whether the Board committed legal error by awarding the route to Piedmont; and

5. That the aforesaid petitions, except to the extent that the action taken herein constitutes the granting thereof, be and they are hereby denied.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

[R. 12946]

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

Washington, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
(as amended)

EASTERN AIR LINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

> Between the terminal point Boston, Mass., the intermediate points Providence, R. I., Hartford, Conn., New Haven, Conn., New York, N. Y., Newark, N. J., Philadelphia, Pa., Atlantic City, N. J., Baltimore, Md., Washington, D. C., Richmond, Va., Danville, Va., Raleigh-Durham, N. C., Winston-Salem, N. C., Greensboro-High Point, N. C., Charlotte, N. C., Spartanburg, S. C., Greenville, S. C., and (a) beyond Greenville, S. C., the terminal point Chattanooga, Tenn., and (b) beyond Greenville, S. C., the intermediate points Anderson, S. C., Augusta, Ga., Atlanta, Ga., Columbus, Ga., Birmingham, Ala., Montgomery, Ala., Dothan, Ala., Pensacola, Fla., Mobile, Ala., New Orleans, La., Baton Rouge, La., Lake Charles, La., Beaumont-Port Arthur, Tex., Houston, Tex., and (i) beyond Houston, Tex., the intermediate point Corpus Christi, Tex., and the terminal point Brownsville, Tex., and (ii) beyond Houston, Tex., the terminal point San Antonio, Tex.,

to be known as Route No. 5.

The service herein authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

(2) The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate, as amended; and may continue to maintain regularly scheduled non-stop service between any two points not consecutively named herein if non-stop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as

[R. 12947]

amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled non-stop service between any two points not consecutively named herein between which service is authorized hereby.

(3) The holder shall not serve Birmingham, Ala., and Atlanta, Ga., by flights originating at Birmingham, Ala., and terminating at Atlanta, Ga., or by flights originating at Atlanta, Ga., and terminating at Birmingham, Ala.

(4) The holder shall not serve Birmingham, Ala., by flights serving both New Orleans, La., and Chicago, Ill.

(5) The holder shall not serve Greensboro-High Point, N. C., and Winston-Salem, N. C., on the same flight, or serve Raleigh-Durham, N. C., and Greensboro-High Point, N. C., on the same flight, or serve Raleigh-Durham, N. C., and Winston-Salem, N. C., on the same flight, or serve Danville, Va., and Raleigh-Durham, N. C., on the same flight.

(6) The holder shall serve Boston, Mass., only on flights originating or terminating south of Richmond, Va., or west of Charleston, W. Va.

(7) The holder shall serve Providence, R. I., Hartford, Conn., and New Haven, Conn., only on flights originating at Boston, Mass., and terminating south of Richmond, Va, or west of Charleston, W. Va., or on flights originating south of Richmond, Va., or west of Charleston, W. Va., and terminating at Boston, Mass.

(8) The holder shall not serve Augusta, Ga., and Greenville, S. C. on the same flight, or serve Augusta, Ga. and Spartanburg, S. C. on the same flight.

(9) The holder shall serve Augusta, Ga., only on flights originating at New Orleans, La., or a point west thereof and terminating at New York, N. Y., or a point north thereof, or originating at New York, N. Y., or a point north thereof and terminating at New Orleans, La., or a point west thereof.

(10) The holder shall serve Dothan, Ala., only on flights originating or terminating at Atlanta, Ga., or a point north thereof.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such reasonable terms, condi-

[R. 12948]

tions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 13th day of October, 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 13th day of October, 1947.

/s/ J. M. LANDIS
Chairman

(SEAL)

ATTEST:

/s/ M. C. MULLIGAN
Secretary

[R. 12949]

UNITED STATES OF AMERICA

CIVIL AERONUATICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
(as amended)

EASTERN AIR LINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

(1) Between the terminal point Miami, Fla., the intermediate points West Palm Beach, Fla., Vero Beach, Fla., Orlando, Fla., Daytona Beach, Fla., Jacksonville, Fla., Waycross, Ga., Macon, Ga., Atlanta, Ga., and (a) beyond Atlanta, Ga., the intermediate points Columbus, Ga., Birmingham, Ala., Florence-Sheffield-Tuscumbia, Ala., and the terminal point Memphis, Tenn., and (b) beyond Atlanta, Ga., the intermediate points Rome, Ga., Chattanooga, Tenn., and Nashville, Tenn., and (i) beyond Nashville, Tenn., the intermediate point Evansville, Ind., and the terminal point St. Louis, Mo., and (ii) beyond Nashville, Tenn., the intermediate points Bowling Green, Ky., Louisville, Ky., and Indianapolis, Ind., and the terminal point Chicago, Ill.;

(2) Between the terminal point Miami, Fla., the intermediate points Tampa, Fla., Tallahassee, Fla., Albany, Ga., Columbus, Ga., Macon, Ga., Atlanta, Ga., Rome, Ga., Chattanooga, Tenn., and Nashville, Tenn.,

and (a) beyond Nashville, Tenn., the intermediate point Evansville, Ind., and the terminal point St. Louis, Mo., and (b) beyond Nashville, Tenn., the intermediate points Bowling Green, Ky., Louisville, Ky., and Indianapolis, Ind., and the terminal point Chicago, Ill.;

(3) Between the terminal point Miami, Fla., the intermediate points Tampa, Fla., Tallahassee, Fla., Dothan, Ala., Montgomery, Ala., Birmingham, Ala., Florence-Sheffield-Tuscumbia, Ala., and the terminal point Memphis, Tenn.; and

[R. 12950]

(4) Between the terminal point Miami, Fla., the intermediate points Tampa, Fla., Tallahassee, Fla., Dothan, Ala., Montgomery, Ala., Birmingham, Ala., and (a) beyond Birmingham, Ala., the intermediate points Florence-Sheffield-Tuscumbia, Ala., and Nashville, Tenn., and (b) beyond Birmingham, Ala., the intermediate points Huntsville, Ala., and Nashville, Tenn., and (i) beyond Nashville, Tenn., the intermediate point Evansville, Ind., and the terminal point St. Louis, Mo., and (ii) beyond Nashville, Tenn., the intermediate points Bowling Green, Ky., Louisville, Ky., and Indianapolis, Ind., and the terminal point Chicago, Ill.,

to be known as Route No. 10.

The service herein authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

(2) The holder may continue to serve regularly any point named herein through the airport last regu-

larly used by the holder to serve such point prior to the date of issuance of this certificate, as amended; and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

(3) Flights between Tampa, Fla., and Miami, Fla., shall originate or terminate at Atlanta, Ga., or Birmingham, Ala., or points north of either thereof.

(4) The holder shall serve either Atlanta, Ga., or both Nashville, Tenn., and Montgomery, Ala., or all flights serving both Chicago, Ill., and New Orleans, La. [R. 12951]

(5) On flights conducted pursuant to the authority contained in route segment (2) of this certificate, the holder shall not serve Columbus, Ga., and Macon, Ga., on the same flight or serve Columbus, Ga., and Albany, Ga., on the same flight.

(6) Flights serving Memphis, Tenn., Atlanta, Ga., and a point or points north of Atlanta, Ga., on the holder's Route No. 5 shall also serve Birmingham, Ala.

(7) The holder shall not serve Birmingham, Ala., and Atlanta, Ga., by flights originating at Birmingham, Ala., and terminating at Atlanta, Ga., or by flights originating at Atlanta, Ga., and terminating at Birmingham, Ala.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 13th day of October, 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 13th day of October, 1947.

/s/ J. M. LANDIS
Chairman

(SEAL)

ATTEST:

/s/ M. C. MULLIGAN
Secretary

[R. 12952]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
(as amended)

PENNSYLVANIA-CENTRAL AIRLINES CORPORATION

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transporation with respect to persons, property, and mail, as follows:

> Between the terminal point Memphis, Tenn., the intermediate points Huntsville, Ala., Chattanooga, Tenn., Knoxville, Tenn., Asheville, N. C., Hickory, N. C., Charlotte, N. C., Winston-Salem, N. C., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Rocky Mount, N. C., and (a) beyond Rocky Mount, N. C., the intermediate point Richmond, Va., and the terminal point Washington, D. C., and (b) beyond Rocky Mount, N. C., the intermediate point Elizabeth City, N. C., and the terminal point, Norfolk, Va.,

to be known as Route No. 51.

The service herein authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

(2) The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the date of issuance of this certificate, as amended; and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points on the date of issuance of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on the 13th day of October, 1947.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 13th day of October, 1947.

/s/ J. M. Landis
Chairman

(SEAL)

ATTEST:

/s/ M. C. Mulligan
Secretary

19. Extracts of Oral Argument Before the Board on Reconsideration by Counsel for State Airlines, Inc., Piedmont Aviation, Inc., and Public Counsel. Record Vol. 29.

Argument by Mr. Philip Schleit for State Airlines, Inc.

[R. 16619]

Even prior to 1941 and at all times since, State has been

[R. 16620]

preparing itself for the job of conducting scheduled air transportation in this area.

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[R. 16621]

On the last issue—adequate financial resources— in your original opinion in this case you specifically found that both

[R. 16622]

State and Piedmont had shown an adequate financing program, so I don't intend to spend much time on that point.

* * * * * * * * * *

[R. 16624]

Now by comparison let us examine the Piedmont organization.

One, Piedmont showed some 46 employees, 4 pilots, 1 radio technician, 9 licensed mechanics and 28 specialized or unlicensed mechanics. Their experience was not shown to be such that any of them could be key employees and in fact there is some doubt as to whether more than a few of them could qualify for scheduled air transport maintenance.

Piedmont did not propose to give up its fixed base operations so that the probability of more than a few of those individuals being available is extremely doubtful. Furthermore, the Board in previous cases has uniformly held that the immediate availability of such personnel is not the test.

[R. 16625]

Today there is no dearth of air transport pilots and mechanics, nor any dearth of excellent facilities available.

Two, some argument will be made that the existence of some small amount of plant facilities and tools should be weighed in the balance in favor of Piedmont and be considered part of its organizational basis. While Piedmont may

have equipment and plant worth 20,000 to 30,000 dollars including everything, it is doubtful whether more than $10,000 worth is usable for DC-3 operations. At the time of the hearing they did not own or rent a hangar they could get a DC-3 in. Nor is there any evidence indicating that engines of the type which will necessarily be used, could be overhauled in Piedmont's shops.

The record in this case does not give any data to indicate how much, if any, of the Piedmont plant could be utilized, since Piedmont's entire passenger case was predicated upon single-engine fabric type airplanes.

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[R. 16626]

Turning now to the next important element in fitness, willingness, and ability, namely, "a plan for the conduct of the service made by competent personnel." It is on this phase of the case that we believe Piedmont completely falls down.

Piedmont's financial plans for a passenger service were based on $450,000. The routes awarded will, we estimate, require nearly three to three and a half times that amount of capital expenditures. As previously pointed out its plans were not for the routes determined by the Board, but were based on a much shorter haul system into small cities. Most of those cities do not have airports at which scheduled air transportation could be conducted.

All cost exhibits were based on the six-passenger single-engined aircraft, the Noordyn Norseman V, and many other essential expenditures were left out, such as pre-operating expenses,—they put in a few, $17,000, I believe—only a few radio facilities were contemplated and there was no allowance for the training of personnel and there were many items that were omitted so that naturally it made a low bid

[R. 16627]

of 44½ cents so far as cost estimates are concerned.

But such plans as were presented revolved about different routes, a different character of operation than the Board has determined necessary. Its plans were solely for day contact operations, while State's realistic and thorough proof covered instrument and night operations as well.

Also such aircaft as Piedmont proposed was completely obsolete for scheduled air transport use under the Civil Air Regulations.

Such proof of public convenience and necessity as was presented by Piedmont did not relate, of course, to the routes awarded.

Even for Piedmont's proposed routes its public convenience and necessity proof was practically nothing. It based its estimates on 100 per cent load factor over part of its routes.

* * * * * * * * * *

While the question of public convenience and necessity for these routes is not in issue here, the proof which an applicant set forth in a hearing has a considerable bearing on the important element in selection of carrier; namely, "interest".

* * * * * * * * * *

[R. 16628]

Piedmont, on the other hand, in support of its route proposal had presented a table as to the popularity of National Parks, a highway flow chart, a few bus and rail schedules and some figures from the 1933 rail survey—all, related to basically other routes.

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[R. 16630]

State realizes that the Board does not require proof in these cases as to safety considerations but State submitted important data bearing on that subject, collected as long ago as 1941.

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[R. 16642]

Mr. Lee: In this case were the other applicants for almost every part of this route system?

Mr. Schleit.: Yes, there were various applicants. I don't think there was any applicant who applied all the way across here as State had, but I think Commonwealth applied part way over and some of them went part way across this way,

(indicating) but I don't think there was any applicant that proposed almost the identical system that State Airlines proposed.

Mr. Lee: Would that materially affect the cross examination or the rebuttal, the nature of the rebuttal that State would engage in if the system was applied for substantially as it was granted?

Mr. Schleit: Yes, Senator Lee, we certainly believe that it would.

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[R. 16644]

State made only casual cross examination of Piedmont assuming that it could not possibly be considered an applicant for the routes for which State was applying. Similarly, State put in no rebuttal evidence against Piedmont which it could have done if State had known that Piedmont could be considered for these routes.

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[R. 16645]

Mr. Lee: May I interrupt you a bit?

I am still thinking back a little of where you are now, on the question of cross examining and on the question of offering evidence against Piedmont. Is it your contention that your case would have been any different say, for example, on the route from Asheville to Wilmington, by way of Charlotte and Pine Hurst and Fayetteville, would your case have been any different for the route from Louisville to Moorehead City than it was against Piedmont for the route between Asheville and Wilmington for which it was an applicant?

Mr. Schleit: Yes, sir, Mr. Lee.

Mr. Lee: And for which it was certificated?

Mr. Schleit: Yes.

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[R. 16647]

Mr. Lee: Your objections and your rebuttal arguments, if you had been on notice, would they have been any different or simply be more of the same, covering more route mileage?

Mr. Schleit: What do you mean by more of the same,
[R. 16648]
Senator?

Mr. Lee: Piedmont, was an applicant for part of the route system that you were applicant for, weren't they?

Mr. Schleit: Yes.

Mr. Lee: Then evidently you rebutted them or you did not. You brought evidence for that part for which they were applicants that you were for or you didn't. Now, if you did, your argument would be any different for any other part of the system, or would it have been more of the same argument which you brought for the route for which you were both applicants?

Mr. Schleit: Each feeder application in this case probably overlapped some other feeder applicant by a segment or two but you try to look at the whole thing and if you have a system that is substantially applying for the same thing, you would be more competitive contesting with him rather than somebody who had only a relatively incidental segment.

As a matter of fact, we never took Piedmont seriously.

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[R. 16649]

Mr. Branch: So your contention based on that was that of this whole system which is in the Board's award only a small portion of it was applied for by Piedmont and, therefore, you contended that State not having any intimation at any time during the hearing or during the case, that Piedmont was going to be awarded this whole system, you weren't having due opportunity to speak your part?

Mr. Schleit: Two arguments, one is that the 401 (d)
[R. 16650]
whole or any part of routes applied for; that the application is insufficient under that section, and two, its an entirely separate and additional argument that we didn't have due notice and hearing.

Mr. Branch: That is based on the fact, as I understand you, that you feel that you did not have any notice that the

Board was contemplating enlarging this application of Piedmont to the extent that it did, that you would have come in and made a showing on your own, that you had a right to do that?

Mr. Schleit: That is right.

Mr. Branch: And that is a legal contention?

Mr. Schleit: Yes.

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[R. 16656]

Mr. Lee: I would like to ask two questions. Do you contend that the Board does not have power to go beyond the Actual route applied for point by point, or is it your position that the Board has that power but in this case it exceeded it in degree, went beyond a reasonable——

Mr. Schleit: Does not have it in this case. I don't know where the line would be drawn, but extending several hundred miles beyond the furthest westerly points. That is certainly beyond the scope of that application.

Now, I certainly would not want to argue that this route in here, you couldn't add a point that was an intermediate point to it, that wasn't specifically sought, although technically my argument would apply to that too.

Mr. Lee: Generally, your argument is that the Board exceeds a reasonable interpretation of the catch-all clause?

Mr. Schleit: And that there was no catch-all clause.

Mr. Lee: One other question. Is it your opinion that

[R. 16657]

that only the carrier that proves convenience and necessity for a route can be granted that route?

Mr. Schleit: No, Senator Lee, we just say that that reflects our interest and planning as a matter of discretion in the selection.

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Chairman Landis: You are not taking the position, Mr. Schleit, that Piedmont today is not capable of running the route that was awarded?

Mr. Schleit: We are taking the position that both State and Piedmont are fit and able, it's a question of which has demonstrated in this record to be more fit, willing and able.

Chairman Landis: Yes, but apart from all these legalisms, isn't the real issue whether or not we made a mistake and picked a carrier who cannot run this route? If we really get down and try to find what is the public interest, isn't that the real point?

Mr. Schleit: I wouldn't say so.

Chairman Landis: I would be very seriously disturbed if that was true, whatever the record of 1944, if today we discard that, today we picked a carrier that wasn't capable of carrying out the certificate, no matter what the record of three years might be.

Mr. Schleit: Mr Landis, if you selected American Air Lines for a route that they didn't apply for and didn't put in any evidence for and weren't an applicant, I would say that

[R. 16658]

that didn't belong to them no matter how able they were.

Chairman Landis: Of course, I suppose I am a little bit of a rebel against the legalisms that creep into these cases and make prompt adjudication difficult because they involve and obscure.

Mr. Schleit: We wouldn't raise the legal objections if we didn't think we were morally entitled to it.

Chairman Landis: I can see that point, but you say that on a balance of equities, it should have gone your way. Well, that is life, sometimes you win and sometimes you lose, but the important thing is not whether you win or Piedmont wins but whether the people of North Carolina and Kentucky and Virginia and that area in there get the kind of service that they should.

Mr. Schleit: We think they will get the service, it is just the question of——

Chairman Landis: If we made a mistake then we should reverse it. If we picked a carrier who can't give the communities the service, we think they should have but here we

go back to a dead record of 1944 and try to argue a lot of things about it. I suppose we have to as you say.

Mr. Branch: Mr. Schleit, your point as I understand it is, that the Board in making this decision and issuing the certificate is required to follow a law, it must get the result that gives the public service, but in doing so there is a prescribed method of doing that which must be followed, is that your contention?

Mr. Schleit: Yes, sir.

Mr. Branch: I see.

[R. 16659]

Chairman Landis: Sometimes we might think that it might be a good thing to get that law changed.

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Argument of Mr. Greer Murphy, Public Counsel.

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[R. 16726]

It is interesting to note that so far State has not indicated just what it would have done if it had a further hearing, or just what evidence it would have been able to adduce on direct or cross-examination that would improve its position.

* * * * * * * * * * *

Rebuttal argument of Mr. Philip Schleit for States Airlines, Inc.

* * * * * * * * * * *

[R. 16731]

It was also stated that the record indicates that Piedmont had facilities for all types of overhaul. The record does say that. Actually it is not so, and had State known that Piedmont was an applicant for these routes, State could have proved it.

* * * * * * * * * * *

[R. 16732]

Mr. Murchison has lifted from its context from State's Exhibit STA-G, page 4, the statement that State would take a year or more to get into full operation. That statement was made with considerable qualifications and was made

during the war. I am authorized to say that State Airlines can now be ready to operate this route in three to four months

[R. 16733]

from the date of a certificate. You need have no fears of delaying service to the traveling public by certificating State.

Conditions have changed since the hearing and the end of the war. Unlimited personnel and far better war created facilities are available than anything Piedmont showed, and that would result in a far more economic and efficient operation.

Chairman Landis: Do you think you can get an operating certificate out of the CAA that quickly?

Mr. Schleit: It depends on how quickly they act.

Chairman Landis: I wouldn't make any guarantee of three or four months.

Mr. Schleit: That is, as far as State is concerned.

Actually, any dependable service under initial contact operations across the mountains in winter, this winter, will be difficult. There is no guarantee of early or reliable service by Piedmont.

Now, inside of 24 hours, money, men, and materials could be rapidly moving, operations started in three to four months. Stockholders now back from overseas are ready with ample funds.

* * * * * * * * * * *

Vol. 24 [R. 13033]
E-1056

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Served:

DOCKET NO. 501 ET AL.

SOUTHEASTERN STATES CASE

Decided: December 12, 1947

Decision of April 4, 1947, selecting Piedmont Aviation, Inc., rather than State Airlines, Inc., for feeder service, affirmed.

Appearances:

PHILIP SCHLEIT for State Airlines, Inc.
CHARLES H. MURCHISON and ROBERT B. HANKINS for Piedmont Aviation, Inc.
E. SMYTHE GAMBRELL for Eastern Air Lines, Inc.
ERNEST V. MOORE for Delta Air Lines, Inc.
GREER M. MURPHY, Public Counsel.

SUPPLEMENTAL OPINION

BY THE BOARD:

On October 13, 1947, the Board issued a supplemental opinion and order in this proceeding, granting in part certain petitions for reconsideration. The supplemental order also directed that the petition of State Airlines, Inc., requesting rehearing, reargument and reconsideration be granted to the extent of hearing argument by State Airlines and Piedmont Aviation, Inc., with respect to two questions, viz: (1) whether the public interest requires the selection of State or

Piedmont to operate the system of local feeder routes which the Board, in its opinion of April 4, 1947, found to be re-
[R. 13034]
quired and awarded to Piedmont; and (2) whether the Board committed legal error by awarding the route to Piedmont.

The record and our previous opinions in this case have been reviewed in the light of the petitions for reconsideration and the oral argument, and the Board finds no reason to depart from its former conclusions. In its petition for reconsideration, State attacked the finding that Piedmont was fit, willing, and able within the meaning of section 401(d) of the Act, and contended that in any event State was more fit, willing, and able than Piedmont and, therefore, should have been selected to operate the route found to be required. The original opinion sets forth the facts on the basis of which Piedmont was selected over State. Essentially, the choice stemmed from the conclusion that Piedmont had demonstrated superior operational experience acquired in the successful conduct of diversified aviation activities and possessed physical facilities and a well-rounded organization with key personnel familiar with operating conditions in the area involved that would be available for the certificated operations.

The general nature of Piedmont's aviation activities is described in the original opinion. These undertakings, included flight and ground school operations involving approximately 3,200,000 miles of flying and in addition it performed 6[illegible]874 miles of charter operations. Piedmont developed extensive shop and overhaul facilities and demonstrated its ability to maintain and overhaul all types of aircraft under contract with the Army during the war. At the time of the
[R. 13035]
hearing it had 42 technical employees consisting of pilots, mechanics, and a radio technician in addition to administrative personnel.

It is impossible to determine precisely the extent to which these facilities and personnel will meet the initial require-

ments of Piedmont in its operations and it is clear that the existing organization will have to be expanded. Nevertheless, this nucleus of a well-rounded organization will materially assist in the prompt inauguration of service, and in the successful conduct of operations once service is begun.

For approximately four years prior to December 31, 1944, State conducted charter services. During that time it flew 294,054 airplane miles and carried 1,463 passengers. These charter services were curtailed after October of 1944. State's actual operating activities were confined to such charter operations and did not embrace most of Piedmont's diversified undertakings. While State had certain stockholders and stockholder-directors with aviation experience, it had only a small number of per ns actually employed, and of these only its president is clearly qualified to administer and conduct the certificated operation. State had no repair and overhaul facilities, or maintenance personnel comparable to those of Piedmont.

State's ability to build up a qualified organization is not questioned. That it could do so was implicit in the finding that the carrier was fit, willing, and able. However, in contrast to Piedmont, State would be forced to build from a skeleton organization, acquiring physical facilities and hiring [R. 13036] and training practically all the personnel that would be needed for the large-scale operation authorized. It therefore appears that State would need more time to set up operations than would Piedmont, and its successful carrying out of the obligations imposed upon the holder of a certificate would be surrounded by more uncertainties.

Statements in other decisions of the Board setting forth factors considered in choosing between competing applicants have been pointed out by State. It is apparently State's position that had more weight been ascribed to certain of these most favorable to it a different result would have been reached. The various relevant factors cannot be given a fixed value to be applied without change in every proceed-

ing, nor can they be weighed in the manner of goods placed on a set of scales. On the contrary, the relative weight to be accorded many of them varies from proceeding to proceeding, and what is a controlling consideration in one situation may possess comparatively minor importance in another.

State has challenged the finding that both Piedmont and State have shown an energetic interest in the conduct of operations. It points to its voluminous traffic potential studies and carefully prepared plan of operation for the route as indicating a greater interest than Piedmont, whose exhibits were less elaborate and were directed to both a conventional passenger service and a mail-property pick-up operation over routes which on a point-to-point basis did not correspond as nearly as did State's to those found to be required.

[R. 13037]

The Board is fully aware of the interest State has shown in this matter and of the thoroughness with which it planned and prosecuted its application both in establishing convenience and necessity and in urging its selection as the carrier to operate local and feeder routes in the Southeastern States area. However, Piedmont, too, has energetically prosecuted its application for a comprehensive system of routes covering a large part of the Southeastern States area. But assuming, *arguendo*, that State has shown greater interest than Piedmont it is clear that this is only one of the many factors to be considered. Enthusiasm and interest cannot alone control the choice.

State also argues that Piedmont's plan of operation was inferior to that of State. It emphasizes Piedmont's proposal to utilize single-engine equipment of a make and model not then approved for commercial operations, and contends that, in any event, passenger operations with single-engine equipment are unlawful under the Civil Air Regulations. The use of single-engined aircraft in scheduled passenger operations, although considerably restricted, is not prohibited by the Civil Air Regulations. On the issue of fitness, willing-

ness, and ability, it has not been the practice of the Board in a proceeding of this type to require an applicant to establish beyond question that an air carrier operating certificate will be issued which will permit operations precisely as proposed. These matters are fully considered upon an

[R. 13038]

application for an air carrier operating certificate under section 604 of the Act, following issuance of a certificate of public convenience and necessity. In any event Piedmont did not exclude the possibility of using other aircraft. Its president testified, and its exhibits show, that the company preferred twin-engine aircraft, but that the single-engine proposal was dictated principally for pick-up service and as a matter of economy. In any event, we assume that any carrier awarded a route will choose the best and most suitable type of equipment available at the time operations are begun.[1]

In addition to urging that the public interest requires the selection of State rather than Piedmont, State contends that the Board committed legal error in its award. As heretofore pointed out, State originally took the position that Piedmont was not fit, willing, and able within the meaning of the Act. The record clearly establishes that Piedmont has adequate financing and possesses the requisite ability to conduct successfully the authorized service. It is clearly fit, willing, and able.

[R. 13039]

State further alleges that on the basis of the application Piedmont filed and prosecuted the Board was without juris-

[1] In an earlier case the Board said: "The problem of equipment is important, especially in connection with long distance over-water services for which no standard type of equipment has yet been developed, but it is not decisive of the broad economic issues of public convenience and necessity for any particular service. Both applicant and intervener have access to the aircraft markets of this country, and it is to be assumed that both will from time to time avail themselves of the most suitable equipment obtainable in such markets." *American Export Air., Trans-Atlantic Service*, 2 C. A. B. 16, 38 (1940).

diction to make the award, and that in so doing it failed to afford State adequate notice and a fair hearing. We find no merit in either of these assertions.

The Board's jurisdiction to select Piedmont is governed by the provisions of sections 401(d)(1) and 401(d)(2) of the Act. Section 401(d)(1) provides that:

> "The Authority shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied."

Section 401(d)(2) contains similar provisions relating to certificates authorizing temporary air transportation.

State argues that in awarding Piedmont a route differing on a point-to-point basis from that specifically applied for, the Board granted what was neither the "whole or any part of the transportation covered by the application." It is unnecessary here to determine the limits which the quoted portion of section 401(d) places upon the Board's powers, for we conclude that Piedmont's request was sufficiently broad in scope to embrace the route awarded it.

Piedmont originally filed an application on June 2, 1944, proposing scheduled air transportation of persons, property, and mail in a combination passenger-property pick-up service over routes covering North Carolina, Ohio, Virginia, West Virginia, Kentucky, Tennessee, Georgia, South Carolina, and the District of Columbia. The application sought authority for nine routes specifically described *"or such modification*

[R. 13040]

of such routes as the Board may find the public convenience requires."

Thereafter, on March 10, 1945, Piedmont filed an amended application which eliminated the specific proposal to carry passengers in the pick-up service and the proposed service in Ohio and Kentucky. However, in paragraph (1) of the amended application, Piedmont specifically restated the language above quoted.

As amended, the application sought a total of 5,763 miles of route specifically described, consisting of five routes for conventional passenger, property, and mail service, totaling 1,404 miles, and fifteen property-mail pick-up routes comprising the remaining mileage. These proposals outlined a comprehensive system of air transportation including the states of Virginia and North Carolina, which are to be served by the route system found to be required. The route awarded Piedmont totaled approximately 1,700 miles.

Piedmont's application, when viewed in the light of all pertinent factors, shows that that carrier was, within the meaning of section 401(d), an applicant for the routes awarded it. It specifically proposed certain routes and types of service. Clearly these represented the proposals that it felt would best meet the public need for service in the area. It recognized, however, that the Board might reach a different conclusion, and drafted its application to indicate its desire to be considered as requesting and as willing to operate those routes which the Board determined were needed. Such a practice has become customary in local feeder service applications and is attributable in large part to the number and the diversity of the factors which must be weighed, both by the various applicants in preparing their applications and by the Board in reaching its decision.

[R. 13041]

In passing upon applications for authority to engage in air transportation the Board must determine what route pattern will best meet the needs of the public convenience and necessity, and having done so must select to operate that route the applicant best qualified to perform the service. Frequently, the route found to be required differs in a marked

degree from that proposed by any applicant, and the best qualified applicant is not always the one proposing the route most nearly approximating that which is established.

The Board, in numerous proceedings, has relied on general statements or prayers in applications to award carriers certificates authorizing service not specifically requested. It is doubtful whether under any other interpretation of the Board's powers it could have fulfilled its obligations under the Act. This is particularly true in cases involving foreign air transportation, where international considerations play an important part, and in area type proceedings for the establishment of local feeder service. A construction of the Board's power in a manner that would limit its choice of a route to that proposed by some single applicant, and its choice of a carrier to that applicant outlining the route most nearly conforming with that found to be required by the Board would be an invitation to frustrate the carrying out of the very purposes which the Act seeks to accomplish.

The Board's attention has been directed to certain decisions of the federal courts, including the United States Supreme Court, in cases arising out of actions by the Interstate Commerce Commission in the issuance of certificates to

[R. 13042]

motor carriers.[2] These decisions upheld the right of the Commission to grant certificates which include authorizations for service which was not specifically requested by the applicants. Although these cases arose under a statutory provision differing somewhat from its counterpart in the Civil Aeronautics Act, and involved different factual situations, there is implicit in the decisions full recognition that in convenience and necessity cases the controlling factor is public interest.

Most of what has been said with respect to the Board's powers is equally applicable with respect to State's conten-

[2] *Chicago, St. Paul, Minneapolis and Omaha Railway, et al.* vs. *United States et al.*, 322 U. S. 1; *McCracken et al.* vs. *United States et al.*, 47 F. Supp. 444; *Alton Railroad et al.* vs. *United States et al.*, 315 U. S. 15.

tion that it was deprived of adequate notice and a fair hearing. In setting up this proceeding the Board consolidated for hearing a large number of applications proposing service in an area extending from Maryland and Ohio to the Gulf Coast and from the Atlantic Seaboard to the Mississippi River. These applications proposed a great variety of routes and services, and virtually every proposal embraced in substance all or a part of the proposals of one or more other applicants.

[R. 13043]

Both State and Piedmont proposed extensive operations throughout the states of Virginia and North Carolina. Each contemplated establishment of a system having greater route mileage than that marked out, and each requested a certificate that would require operations over the varied terrain that is covered by the certificate we will issue.

Under the circumstances, both parties must or should have been aware of the fact that they were competing applicants for routes in the Southeastern States area, and that the Board might choose one to the exclusion of the other as the operator of the routes established in the area. State had every opportunity to present all relevant facts favoring its selection. It further had sufficient notice of the matters in issue to afford it a fair opportunity for showing by cross-examination or otherwise that it should be chosen in preference to other applicants.

The mere fact that State, intent on matters which it deemed more important, did not consider Piedmont as a threat to it, cannot be used to support a plea that it was deprived of notice and hearing. Although in the course of the subsequent argument State asserted that had it been aware of the situation it might have presented additional or different evidence and would have enlarged upon its inquiries into Piedmont's case, it did not, in the course of the argument or in its petition for reconsideration, specify what the nature of such additional evidence or inquiries would have been.[3]

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[3]

The procedure in this case was the same as that followed by the Board both prior to and since this case in consolidated foreign air transportation proceedings and local feeder area proceedings, where similar problems had to be met.[4] The

[13044]

only practical approach that can be taken in cases of this type is to consider the applications, not with a view as to how an individual proposal would benefit the applicant, or whether a particular proposed route is required precisely as set forth in an application, but rather to consider the entire case with the objective of establishing a sound transportation pattern in the area involved.

On the basis of the foregoing considerations and all the facts of record, we reaffirm our previous findings that Piedmont is fit, willing, and able and that it should be authorized to engage in temporary air transportation over the routes outlined in our decisions of April 4 and October 13, 1947. We therefore find that the petition of State Airlines, Inc., for rehearing, reargument, and reconsideration, except as granted by our opinion and order of October 13, 1947, should be denied.

Since our original decision in this case, several months have elapsed, during which time the Southeastern States area has been without the service we found to be required by the public convenience and necessity and authorized. Piedmont has submitted data regarding the status of airports serving the points designated on the route awarded to it, from which it appears that operations can be instituted over the route in a manner consistent with our decision. We find that a temporary certificate should be issued to Piedmont authorizing it to engage in air transportation over the route described in our prior opinions and orders in this proceeding.

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[4] *West Coast Case*, 6 C. A. B. 961 (1946); *New England Case*, 7 C. A. B. 27 (1946); *North Central Case*, Docket No. 415, decided December 19, 1946; *Colonial Air, et al., Atlantic Seaboard Operation*, 4 C. A. B. 552 (1944); *Northeast Air. et al., North Atlantic Routes*, 6 C. A. B. 319 (1945).

[R. 13045]

In addition to State's petition for rehearing, reargument, and reconsideration, several intermediate applications, motions, and petitions requesting various relief have been filed with the Board by parties to the proceeding.[5] We have considered these and find nothing in them that would lead us to a conclusion different from that heretofore reached. The requests either seek relief inconsistent with the decision we have reached and should be denied, or are rendered moot by our decision and should be dismissed.

An appropriate order will be entered.

Landis, Chairman, and Lee, Member, concurred in the above opinion. Branch, Member, filed the attached concurring opinion. Ryan, Vice Chairman, did not take part in the decision.

[5] Motion of Eastern Air Lines, Inc., of August 22, 1947, for dismissal of Piedmont's motion for issuance of certificate. State's application for an order restraining and staying Piedmont from making expenditures or obligating itself in reliance upon the Board's order of April 4, 1947; State's motion of June 20, 1947, for immediate decision on its petition for rehearing, reargument, and reconsideration; and State's petition of July 21, 1947, for stay of issuance of a temporary certificate to Piedmont.

[R. 13046]

BRANCH, Member, concurring:

I concur in the foregoing opinion. The only issue here before the Board for reconsideration is whether State Airlines or Piedmont Aviation should be selected as the operator of the feeder route established in the Piedmont area in the *Southeastern States Case*.[1] In that proceeding I concurred in the establishment of the feeder route for which Piedmont was selected as the operator. The decision in the *Southeastern States Case* which is here affirmed antedated the Board's decision in the *Great Lakes Area Case*[2] in which in a concurring and dissenting opinion I expressed the view that a sufficient number of feeder routes of this type had theretofore been established to provide an adequate experimentation. I am therefore concurring in the action of the majority in affirming the selection of Piedmont as the operator of the feeder route established for the Piedmont area in the Southeastern States Case.

/s/ HARLLEE BRANCH

[1] Decided April 4, 1947.
[2] Decided September 3, 1947.

[R. 13047]

Orders
Serial Number E-1056

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 12th day of December, 1947.

In the matter of the application of AERO PICKUP SERVICE CORPORATION and other applicants for certificates of public convenience and necessity, known as THE SOUTHEASTERN STATES CASE	Docket No. 501 et al.

ORDER ISSUING TEMPORARY CERTIFICATE

1. A full public hearing having been held in the above-entitled proceeding;

2. The Board, upon consideration of the record, having issued its opinion on April 4, 1947, containing its findings, conclusions, and decision, and in accordance with said opinion having issued an order (Order Serial No. E-435) directing, *inter alia*, that a temporary certificate of public convenience and necessity be issued to Piedmont Aviation, Inc. (hereinafter referred to as "Piedmont"), after an appropriate showing as to adequacy of airport facilities;

3. State Airlines, Inc. (hereinafter referred to as "State"), having filed with the Board on May 8, 1947, a peti-

tion for rehearing, reargument and reconsideration of said decision and order insofar as it failed to award to State the authority granted to Piedmont;

4. State having further filed with the Board (a) on May 8, 1947, an application for an order restraining and staying Piedmont from making any capital expenditures or obligating itself in reliance upon the Board's aforementioned order of April 4, 1947, pending decision on State's petition for rehearing, reargument and reconsideration, (b) on June 20, 1947, a motion for immediate decision on its petition for rehearing, reargument and reconsideration, and (c) on July 21, 1947, a petition for stay of issuance of the aforementioned temporary certificate to Piedmont;

[R. 13048]

5. Piedmont having filed with the Board on August 14, 1947, as amended on November 7, 1947, a motion requesting the issuance forthwith of the aforementioned certificate on the ground that Piedmont had made appropriate showing as to the adequacy of airport facilities;

6. Eastern Air Lines, Inc. (hereinafter referred to as "Eastern"), having filed with the Board on August 22, 1947, a motion to dismiss the aforementioned motion of Piedmont on the grounds, *inter alia*, that (a) Piedmont had not made an appropriate showing as to adequacy of airports, and (b) the Board should not issue a certificate to Piedmont until disposition of the petitions for rehearing, reargument and reconsideration then pending in this proceeding;

7. State having filed with the Board on August 22, 1947, an answer in opposition to Piedmont's aforementioned motion of August 14, 1947, for issuance of a temporary certificate;

8. The Board by order dated August 27, 1947 (Order Serial No. E-774), having postponed action on the aforesaid

motion of Piedmont until disposal of such portions of the then pending petitions for reconsideration as sought reconsideration of the Board's order of April 4, 1947, making the original award to Piedmont;

9. The Board having on October 13, 1947, issued a supplemental opinion and order (Order Serial No. E-873) granting, *inter alia*, the aforementioned petition of State for rehearing, reargument and reconsideration, to the extent of hearing argument on the questions of (a) whether the public interest required the service of State or Piedmont, and (b) whether the Board committed legal error by awarding the route to Piedmont;

10. The Board, on October 29-30, 1947, having heard oral argument on the aforesaid questions and, upon the reconsideration of the entire record in this proceeding, having issued a second supplemental opinion containing its findings, conclusions and decision, which is attached hereto and made a part hereof; and

11. The Board finding that Piedmont has made an appropriate showing as to the adequacy of airport facilities contemplated by the Board's aforementioned order of April 4, 1947;

IT IS ORDERED:

1. That a temporary certificate of public convenience and necessity in the form attached hereto shall be issued to Piedmont Aviation, Inc., for route No. 87;

[R. 13049]

2. That said certificate shall be signed on behalf of the Board by the Chairman, and shall have affixed thereto the seal of the Board, attested by the Secretary;

3. That the petition of State Airlines, Inc., of May 8, 1947, for rehearing, reargument and reconsideration, except

as granted by the Board's order of October 13, 1947 (Order Serial No. E-873), be and it is hereby denied;

4. That the aforementioned application of State Airlines, Inc., of May 8, 1947, for a restraining order, and the aforementioned motion of State Airlines, Inc., of June 20, 1947, for immediate decision, be and they are hereby dismissed;

5. That the aforementioned petition of State Airlines, Inc., of July 21, 1947, for stay of issuance of a temporary certificate to Piedmont, except as granted, in effect, by the Board's aforementioned order of August 27, 1947 (Order Serial No. E-744), be and it is hereby dismissed;

6. That the motion of Eastern Air Lines, Inc., of August 22, 1947, for dismissal of the aforementioned motion of Piedmont for issuance of a certificate, be and it is hereby denied.

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

(SEAL)

[R. 13050]

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

TEMPORARY CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

PIEDMONT AVIATION, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

(1) Between the alternate terminal points Cincinnati, Ohio, and Louisville, Ky., the intermediate points Lexington, Ky., London-Corbin, Ky., Middlesboro-Harlan, Ky., and Bristol, Va., and (a) beyond Bristol, Va., the intermediate points Asheville, N. C., Charlotte, N. C., Southern Pines-Pinehurst-Aberdeen, N. C., and Fayetteville, N. C., and the terminal point Wilmington, N. C., and (b) beyond Bristol, Va., the intermediate points Winston-Salem, N. C., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Goldsboro, N. C., and New Bern, N. C., and, from May 1 to October 31, inclusive, of each year, the terminal point Morehead City, N. C.;

(2) Between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky.-Huntington, W. Va., Charleston, W. Va., Beckley, W. Va., Princeton-Bluefield, W. Va., Roanoke, Va., Lynchburg, Va., Charlottesville, Va., and Richmond, Va., and the terminal point Norfolk, Va.; and

(3) Between the terminal point Roanoke, Va., the intermediate points Danville, Va., Greensboro-High Point, N. C., Raleigh-Durham, N. C., and Fayetteville, N. C., and the terminal point Wilmington, N. C.,

to be known as Route No. 87.

[R. 13051]

The service herein authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

(2) Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may regularly serve a point named herein through any airport convenient thereto.

(3) On each trip operated by the holder over all or part of one of the four numbered route segments in this certificate, the holder shall stop at each point named between the point of origin and point of termination of such trip on such segment, except a point or points with respect to which (1) the Board, pursuant to such procedure as the Board may from time to time prescribe, may by order relieve the holder from the requirements of such condition, (2) the holder is authorized by the Board to suspend service, or (3) the holder is unable to render service on such trip because of adverse weather conditions or other conditions which the holder could not reasonably have been expected to foresee or control.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on the 12th day of December, 1947, and shall continue in effect for a period of three years.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on this 12th day of December, 1947.

/s/ J. M. LANDIS
Chairman

(SEAL)

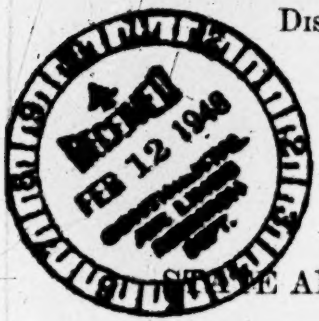
ATTEST:

/s/ M. C. MULLIGAN
Secretary

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.



No. 9748

STATE AIRLINES, INC., *Petitioner*,

v.

CIVIL AERONAUTICS BOARD, *Respondent*.

PETITION OF STATE AIRLINES, INC., FOR REVIEW OF ORDERS OF THE CIVIL AERONAUTICS BOARD

STATE AIRLINES, INC.,
By H. K. GILBERT, JR.,
President.

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January 19, 1948.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No.

STATE AIRLINES, INC., *Petitioner*,

v.

CIVIL AERONAUTICS BOARD, *Respondent*.

PETITION OF STATE AIRLINES, INC., FOR REVIEW OF ORDERS OF THE CIVIL AERONAUTICS BOARD

To the Honorable the Judges of the United States Court of Appeals for the District of Columbia:

The Petition of State Airlines, Inc., (hereinafter sometimes called "State" or "State Airlines") respectfully shows to this Court as follows:

Jurisdiction.

1. This petition, filed under Section 1006 of the Civil Aeronautics Act of 1938 (52 Stat. 1024, 49 U. S. C. § 646) and Section 10 of the Administrative Procedure Act (5 U. S. C. § 1009), seeks a review of:

(1) An Order of the Civil Aeronautics Board dated April 4, 1947, and served upon the petitioner April 8, 1947 (Order Serial No. E-435) in the proceeding entitled "In the Matter of the Application of Aero Pickup Service Corporation and Other Applicants for Certificates of Public Convenience and Necessity, known as the *Southeastern States Case*" under section 401 of the Civil Aeronautics Act of 1938, as amended (49 U. S. C. § 481), which order

(a) denied the applications of your petitioner, State Airlines, Inc., in Docket Nos. 1114, 1711 and 1776, for certificates of public convenience and necessity authorizing it to conduct air transportation of persons, property, and mail over these same routes. Your petitioner proposed routes as follows: (1) between the terminal points Cincinnati, Ohio, and Norfolk, Va., via certain intermediate points; (2) between the terminal points Louisville, Ky., and Wilmington, N. C., via certain intermediate points; (3) between the terminal points Roanoke, Va., and Wilmington, N. C., via certain intermediate points; (4) between the terminal points Norfolk, Va., and Louisville, Ky., via certain intermediate points; (5) between the terminal points Louisville, Ky., and Wilmington, N. C., via certain intermediate points; (6) between the terminal points Cincinnati, Ohio, and Charleston, S. C., via certain intermediate points; (7) between the terminal points New Bern, N. C., and Chattanooga, Tenn., via certain intermediate points; (8) between the terminal points Norfolk, Va., and Montgomery, Ala., via certain intermediate points; and (9) between the terminal points Savannah, Ga., and Montgomery, Ala., via certain intermediate points. Such proposed routes together with the route mileage are more fully set forth in Appendix B attached hereto and are shown on map No. 1, Appendix C, also attached.

(b) directed the issuance of certain certificates of public convenience and necessity not here in issue, and di-

rected that a temporary certificate of public convenience and necessity be thereafter issued after an appropriate showing indicated in the opinion attached thereto as to the adequacy of airport facilities, to Piedmont Aviation, Inc., (hereinafter sometimes called "Piedmont") authorizing it to engage in air transportation with respect to persons, property and mail for a period of three years from the date of issuance, as follows:

"(a) Between the alternate terminal points Cincinnati, Ohio, and Louisville, Ky., the intermediate points Lexington, Ky., Bristol, Va., and (i) beyond Bristol, the intermediate points Asheville, N. C., Charlotte, N. C., Southern Pines-Pinehurst-Aberdeen, N. C., Fayetteville, N. C., and the terminal point Wilmington, N. C. and (ii) beyond Bristol, the intermediate points Winston-Salem, N. C., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Goldsboro, N. C., and the terminal point New Bern, N. C., and (during the period from May 1 to October 31 inclusive of each year) between the intermediate point New Bern, N. C., and the terminal point Morehead City, N. C.;[1]

"(b) Between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky.-Huntington, W. Va., Charleston, W. Va., Beckley, W. Va., Princeton-Bluefield, W. Va., Roanoke, Va., Lynchburg, Va., Charlottesville, Va., Richmond, Va., and the terminal point Norfolk, Va., and

"(c) Between the terminal point Roanoke, Va., the intermediate points Danville, Va., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Fayetteville, N. C., and the terminal point Wilmington, N. C."

(2) An Order of the Civil Aeronautics Board dated October 13, 1947 and served upon petitioner on October 13, 1947, amending paragraph 10 of the Order of the Board,

[1] The location of cities and pattern of routes referred to throughout this petition are more clearly shown in maps contained in the Appendices. Map No. 4, Appendix E, shows routes described in these subparagraphs.

dated April 4, 1947, to include London-Corbin, Kentucky and Middlesboro-Harlan, Kentucky as intermediate points between Lexington, Kentucky and Bristol, Virginia on the routes awarded to Piedmont Aviation, Inc.

(3) An Order of the Civil Aeronautics Board dated December 12, 1947, and served upon petitioner on December 15, 1947, denying petitioner's petition for reconsideration and directing the issuance of a temporary certificate to Piedmont Aviation, Inc. for the routes set forth above.

2. Your petitioner, State Airlines, Inc., is a corporation duly organized under the laws of the State of Delaware and duly qualified to engage in business in the State of North Carolina, having its principal office and place of business in Charlotte, North Carolina. Veterans of World War II own or control 67% of petitioner's capital stock. Petitioner is a non-certificated irregular air carrier engaged in non-scheduled air transportation pursuant to Section 292.1 of the Economic Regulations of the Civil Aeronautics Board.

Nature of the Proceedings.

3. The nature of the proceedings before the Civil Aeronautics Board (hereinafter called "The Board") which resulted in the Orders of which review is hereby sought was as follows:

(a) This proceeding before the Board was a consolidated proceeding including the applications of 25 applicants, pursuant to Section 401 of the Civil Aeronautics Act of 1938 (52 Stat. 987, 49 U. S. C. § 481) for the establishment of new and additional air transportation services in the southeastern portion of the United States. Included in this area were the States of Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and portions of Ohio, Indiana, Florida, Missouri, Maryland and the District of Columbia.

(b) The applications considered in this proceeding were filed by All American Aviation, Inc., American Airlines, Inc., Atlantic and Carolina Airways Company, Blue Grass Airlines, Braniff Airways, Chicago and Southern Air Lines, Inc., Colonial Airlines, Inc., Commonwealth Air Transport, Inc., Cotton Belt Airlines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Gillespie Airways, National Airlines, Inc., Pennsylvania-Central Airlines Corporation, Piedmont Aviation, Inc., Prairie Airlines, Inc., Seaboard Air Transport, Inc., South East Airlines, Inc., Southeastern Air Express, Inc., Southern Airways, Inc., Southern Aviation Corporation, Southern Bus Lines, State Airlines, Inc. (your petitioner), Transcontinental and Western Air, Inc., Virginia Airways and Virginia Central Airlines. Nine of the above-listed applicants are air carriers holding permanent certificates of public convenience and necessity authorizing them to engage in the air transportation of persons, property, and mail over certain routes; one, All American Aviation, Inc., holds a certificate authorizing it to engage in pick-up air transportation of property and mail over certain routes. The other 15 applicants, including your petitioner and Piedmont Aviation, Inc., did not hold any certificate of public convenience and necessity.

(c) The Board granted leave to intervene in the proceeding to the Pan Atlantic Steamship Corporation; the South Carolina Aeronautics Commission; Campbell County, Kentucky; The Board of Commissioners of Montgomery, Ala.; Southern Commercial Air Transport, Inc.; Key Airlines; Plantation Air Lines, Inc.; the cities of Mobile, Florence, Huntsville, Sheffield, and Birmingham, Ala.; Jacksonville and Pensacola, Fla.; Albany, Brunswick, Columbus, Tifton, Valdosta, Waycross, Moultrie, Rome, Augusta, Savannah, and Macon, Ga.; Asheville, Charlotte, Goldsboro, Wilson, Greensboro, High Point, Rocky Mount, Winston-Salem,

Raleigh, and Wilmington, N. C.; Anderson, Charleston, Greenville, Greenwood, and Spartanburg, S. C.; Chattanooga and Memphis, Tenn.; Cincinnati, Ohio; Louisville, Owensboro, and Paducah, Ky.; Norfolk, Richmond, Lynchburg, and Danville, Va.; Tupelo and Meridian, Miss.; Huntington, W. Va.; Evansville, Ind., and Hagerstown, Md.

(d) A public hearing was held before Trial Examiners Ross I. Newmann and Curtis C. Henderson of the Board's staff beginning May 28, 1945, and continuing from day to day until June 22, 1945. Merle P. Lyon and V. Rock Grundman of the Board's General Counsel's staff were designated as Public Counsel and were assigned to and in attendance at the hearing and subsequent proceedings with authority to make recommendations as to the certifications of applicants.

(e) Thereafter briefs to the Examiners were filed by all interested parties on or about September 26, 1945. At or about that time the two Public Counsel also filed a brief to the Examiners making certain recommendations including the recommendation that the public convenience and necessity required the issuance to your petitioner, State Airlines, Inc., of a temporary certificate of public convenience and necessity for routes described as follows:

> Between Cincinnati, Ohio, and Roanoke, Va., via Portsmouth, Ohio, Ashland, Ky.-Huntington, W. Va., Charleston and Princeton-Bluefield, W. Va., and beyond Roanoke, Va., to Norfolk, Va., via Lynchburg, and Richmond, Va., and beyond Roanoke, Va., to Wilmington, N. C., via Danville, Va., Reidsville, Greensboro, Burlington, Durham-Raleigh, Fayetteville, Lumberton, Goldsboro, New Bern, N. C., subject to the condition that Fayetteville and Lumberton shall not be served on the same flights serving Durham-Raleigh and Goldsboro. (See Map No. 3, Appendix D, attached hereto.)

Public Counsel made an amended recommendation in their brief to the Board. (See Map No. 3, Appendix D) In addition to the foregoing routes, at the time of the oral argument, on August 29, 1946, Public Counsel recommended the addition of Portsmouth, Ohio, and Huntington and Charleston, W. Va., to the Cincinnati-Norfolk route previously recommended. Public Counsel recommended that the applications of Piedmont Aviation, Inc., be denied in their entirety.

(f) Thereafter the Examiners issued their report, served on the parties June 4, 1946, making various recommendations including the recommendation that the Board issue to your petitioner, State Airlines, Inc., a temporary certificate of public convenience and necessity authorizing your petitioner to engage in the air transportation of persons, property and mail over routes described as follows:

"(a) from the terminal point Louisville, Ky., via the intermediate points Lexington and Hazard, Ky., and Bristol, Va./Tenn., and beyond Bristol via (1) Asheville, Hickory, Statesville, Charlotte, Rockingham-Hamlet, and Fayetteville, N. C., to the terminal point Wilmington, N. C., (2) North Wilkesboro, Winston-Salem, Greensboro-High Point, Burlington, and Raleigh-Durham, N. C., and beyond Raleigh-Durham via (a) Wilson and Greenville, N. C., to the terminal point New Bern, N. C., and via (b) Goldsboro and Kinston, N. C., to the terminal point New Bern, N. C., beyond New Bern, a seasonal operation to Morehead City, N. C.; (b) between the terminal points Raleigh-Durham, N. C., and Columbia, S. C., via the intermediate points Fayetteville and Lumberton, N. C., and Florence and Sumter, S. C., and a seasonal operation to include Myrtle Beach, S. C., as an intermediate point between Lumberton, N. C., and Florence, S. C., and (c) between the terminal points Raleigh-Durham, N. C., and Columbia, S. C., via the intermediate points Burlington, Greensboro-High Point, Winston-Salem, Salisbury, and

Charlotte, N. C., and Rock Hill, Chester, and Camden, S. C." (See Map No. 2, Appendix D, attached hereto.)

The Examiners also made other recommendations including the recommendation that another applicant, Piedmont Aviation, Inc., be issued a temporary certificate of public convenience and necessity for persons, property and mail over the following routes:

"From the terminal point Winston-Salem, N. C., via the intermediate points Greensboro-High Point, N. C., Reidsville, N. C., Danville, Va., Martinsville, Va., Roanoke, Va., and beyond Roanoke via (1) the intermediate points Lynchburg, Va., Charlottesville, Va., Richmond, Va., and Petersburg, Va., to the terminal point Norfolk, Va., and (2) via the intermediate points Covington-Clifton Forge, Va., Lexington, Va., Staunton, Va., Harrisonburg, Va., Winchester, Va., and Martinsburg, W. Va., to the terminal point, Washington, D. C. (See Map No. 6, Appendix G, attached hereto.)

Piedmont had filed an application for certain mail, express and property routes using the pick-up method. Its application for passengers, mail, express and property proposed routes as follows: (1) Between the terminal points Winston-Salem, N. C., and Washington, D. C., via certain intermediate points; (2) Between the terminal points Norfolk, Va., and Roanoke, Va., via certain intermediate points; (3) Between the terminal points Wilmington, N. C., and Knoxville, Tenn., via certain intermediate points; (4) Between the terminal points Columbia, S. C., and Asheville-Hendersonville, N. C., via certain intermediate points; and (5) Between the terminal points Winston-Salem, N. C., and Columbia, S. C., via certain intermediate points. Such proposed routes are more fully set forth in Appendix H attached hereto and are shown on Map No. 4, Appendix E.

(g) After the Examiners' Report on or about June 19, 1946, exceptions to the Report were filed by various parties

including Piedmont and your petitioner. Piedmont filed exceptions only to (1) the Examiners' failure to recommend that Piedmont be granted a route from Winston-Salem southwardly to Columbia by way of Statesville, Charlotte, Rock Hill, Chester and Camden; (2) the recommendation of your petitioner, State Airlines, Inc., for a route from Winston-Salem southwardly to Columbia by way of Salisbury, Charlotte, Rock Hill, Chester and Camden; (3) the failure of the Examiners to recommend that Piedmont Aviation, Inc., be granted a route from Wilmington to Knoxville by way of Fayetteville, Rockingham-Hamlet, Charlotte, Gastonia, Shelby, and Asheville-Hendersonville; (4) the recommendation that your petitioner, State Airlines, Inc., be granted a route from Wilmington to Asheville by way of Fayetteville, Rockingham-Hamlet, Charlotte, Statesville and Hickory; and (5) the failure of the Examiners to recommend any airmail pick-up routes and in failing to recommend Piedmont Aviation, Inc., for the airmail pick-up routes requested in its application.

State Airlines, your petitioner, on June 19, 1946, also filed a number of exceptions, excepting generally to the recommendations of the Report insofar as it recommended certain routes or route segments applied for by it be granted to other applicants; insofar as it recommended denial of certain route proposals of your petitioner; insofar as it failed to recommend State for a Cincinnati-Norfolk route; insofar as it made certain recommendations as to American Airlines, Inc., and Eastern Air Lines, Inc., and certain other minor exceptions. No specific exception was made to the recommendation for Piedmont.

(h) Thereafter briefs on exceptions or in support of the Examiners' Report were filed by various interested parties on various dates up to and including August 12, 1946. Oral argument was made by interested parties for several days beginning August 28, 1946, at the conclusion of which time the proceedings stood finally submitted to the Board for decision.

(i) Thereafter on April 8, 1947, the decision of the Board dated April 4, 1947, was served upon the parties including the Opinion and Order of the Board together with certain amended certificates issued by the Board to some of the already certificated air carrier applicants, but denying the applications of your petitioner in their entirety.

(j) Thereafter Eastern Air Lines, Inc., Delta Air Lines, Inc., Commonwealth Air Transport, Inc., All American Aviation, Inc., Blue Grass Airlines, Gillespie Airways, Southern Aviation, Inc., South East Airlines, Inc., the cities of Charlotte, N. C., Wilmington, N. C., Greenville, S. C., Spartanburg, S. C., Chattanooga, Tenn., Augusta, Ga., Sheffield, Ala., Norfolk, Va., Owensboro, Ky., and Evansville, Ind., the Chambers of Commerce of the cities of Spartanburg, S. C., Charleston, W. Va., Memphis, Tenn., and of the State of Kentucky, the Kentucky Aeronautics Commission, the Tennessee Bureau of Aeronautics and certain other parties, and your petitioner filed with the Board petitions variously seeking reconsideration, rehearing and/or reargument of the Board's Order of April 4, 1947. The petition of State Airlines, Inc., and on information and belief the other said petitions, were filed pursuant to Section 285.11 of the Economic Regulations of the Civil Aeronautics Board, which provides that any party may petition for rehearing, reargument or reconsideration of any final order of the Board within 30 days after service of the order. Petitioner filed its said petition for reconsideration, reargument and/or rehearing on May 8, 1947. On that date your petitioner, State Airlines, Inc., also filed an application for a stay and restraining order pending decision by the Board on its petition for reconsideration. In such application your petitioner sought an order of the Board, pending decision on its petition to the Board for reconsideration, which order would restrain and stay Piedmont Aviation, Inc.,

from making any capital expenditures or obligations or committing itself in any manner whatsoever in reliance upon the terms of the Board's order of April 4, 1947.

(k) On June 20, 1947, your petitioner filed a motion for immediate decision on its petition to the Board for reconsideration.

(l) On July 18, 1947, the Board had taken no action on either petitioner's petition for reconsideration or its application for stay and restraining order both of which documents were filed with the Board on May 8, 1947, nor had the Board taken any action on petitioner's motion for immediate decision filed June 20, 1947.

(m) On July 18, 1947, therefore, petitioner filed a petition for review of the order of April 4, 1947 with this Court. On August 12, 1947 the Board moved to dismiss such petition on the grounds inter alia that the petition was prematurely filed and that petitioner had not exhausted its administrative remedies.

(n) Simultaneously with the filing of such petition for review, petitioner again renewed its petition to stay the granting of a certificate to Piedmont. No action was taken on such request nor on petitioner's request filed May 8, 1947 for a stay and restraining order until August 6, 1947 when the Board wrote a letter over the signature of its Chairman to Piedmont Aviation, Inc. (Appendix K) stating in part as follows:

> "* * * the Board will of necessity take account of the fact that Piedmont has acted with notice that the order was subject to review and that the preservation of the right to administrative reconsideration required that any effective review not be defeated by intervening action of one of the parties taken in purported reliance upon the order."

Thereafter while the Board's motion to dismiss the petition for review was pending before this Court, the Board entered an Order dated August 27, 1947 deferring action as to the actual issuance of the temporary certificate to Piedmont Aviation, Inc., which Order was entitled:

> "Order Postponing Action on Motion of Piedmont Aviation, Inc., for Issuance of a Certificate of Public Convenience and Necessity." (Appendix L)

(o) On information and belief this Court was advised of such Order of the Board dated August 27, 1947.

(p) On September 3, 1947 this Court entered an Order dismissing the petition for review on the ground that such petition for review was prematurely filed.

(q) On October 13, 1947 the Board issued a Supplemental Opinion and Order deciding most of the issues raised by the various petitions for reconsideration but granting your petitioner's petition to the extent of granting reargument. Oral reargument was held by the Board on October 29 and 30, 1947 solely on the issues of (a) whether the public interest requires the selection of State or Piedmont, and (b) whether the Board committed legal error by awarding the route to Piedmont.

(r) On December 15, 1947 the Board announced and issued its second Supplemental Opinion and Order dated December 12, 1947 denying petitioner's petition for reconsideration and directing the issuance of a temporary certificate of public convenience and necessity for 3 years to Piedmont Aviation, Inc., for the routes described in subparagraphs 1 (1)(b) and (2) of this petition.

Petitioner's Interest.

4. Your petitioner, State Airlines, Inc., has a substantial interest in the order of the Board, the review of which is sought herein by virtue of the facts hereinabove and hereinafter set forth:

(a) Your petitioner is an applicant for a permanent or temporary certificate or certificates of public convenience and necessity authorizing air transportation of persons, property and mail as follows: (1) Between the terminal points Cincinnati, Ohio, and Norfolk, Va., via certain intermediate points; (2) between the terminal points Louisville, Ky., and Wilmington, N. C., via certain intermediate points; (3) between the terminal points Roanoke, Va., and Wilmington, N. C., via certain intermediate points; (4) between the terminal points Norfolk, Va., and Louisville, Ky., via certain intermediate points; (5) between the terminal points Louisville, Ky., and Wilmington, N. C., via certain intermediate points; (6) between Cincinnati, Ohio, and Charleston, S. C., via certain intermediate points; (7) between the terminal points New Bern, N. C., and Chattanooga, Tenn., via certain intermediate points; (8) between the terminal points Norfolk, Va., and Montgomery, Ala., via certain intermediate points; and (9) between the terminal points Savannah, Ga., and Montgomery, Ala., via certain intermediate points. Such proposed routes together with the route mileages are more fully set forth in Appendix B attached hereto and shown on Map No. 1, Appendix C, also attached.

(b) The Board's Orders of April 4, 1947, and December 12, 1947, denied to your petitioner the authority requested by it and subject to certain conditions hereinbefore recited, granted to the applicant, Piedmont Aviation, Inc., much of the authority requested by your petitioner, although the major portion of such authority was not covered by the application of Piedmont. Because of such grant of authority to Piedmont, the Board therefore excluded your petitioner and denied its applications.

(c) Your petitioner applied to the Board over 6 years ago for authority to operate such routes and has spent upwards of seventy-five thousand dollars ($75,000.00) in

addition to several years of time and efforts prior to and since the filing of such application in pioneering, research and development of plans for the operation of a local air transportation service over the routes awarded. Your petitioner contends that it developed the route concept adopted by the Board. Such route system is one of the largest in route mileage and traffic potential of some 16 feeder airline systems certificated by the Board. If the Board's Order stands, your petitioner's time, money and efforts expended in the past 7 or 8 years will have been wasted, as the only way such expenditures can be recovered is through the award of a certificate of public convenience and necessity, for at least part of the routes applied for by your petitioner.

Relief Prayed.

5. Your petitioner respectfully petitions for review of said Orders of the Civil Aeronautics Board, and upon such review, the Court set aside and/or modify the Orders of April 4, 1947 and December 12, 1947, to the extent they:

(a) Deny the application of State Airlines, Inc., for the authority granted to Piedmont Aviation, Inc.;

(b) Direct the issuance of a temporary certificate of public convenience and necessity authorizing Piedmont Aviation, Inc., to engage in the air transportation of persons, property and mail over the following routes:

"(a) Between the alternate terminal points Cincinnati, Ohio, and Louisville, Ky., the intermediate points Lexington, Ky., London-Corbin, Ky., Middlesboro-Harlan, Ky., Bristol, Va. and (i) beyond Bristol, the intermediate point Asheville, N. C., Charlotte, N. C., Southern Pines-Pinehurst-Aberdeen, N. C., Fayetteville, N. C., and the terminal point Wilmington, N. C., and (ii) beyond Bristol, the intermediate points Winston-Salem, N. C., Greensboro-High Point, N. C., Raleigh-Durham, N. C.,

Goldsboro, N. C., and the terminal point New Bern, N. C., and (during the period from May 1 to October 31 inclusive of each year) between the intermediate point New Bern, N. C., and the terminal point Morehead City, N. C.;

"(b) Between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky.-Huntington, W. Va., Charleston, W. Va., Beckley, W. Va., Princeton-Bluefield, W. Va., Roanoke, Va., Lynchburg, Va., Charlottesville, Va., Richmond, Va., and the terminal point Norfolk, Va.; and

"(c) Between the terminal point Roanoke, Va., the intermediate points Danville, Va., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Fayetteville, N. C., and the terminal point Wilmington, N. C."

and that the court modify the Orders of April 4, 1947, and December 12, 1947, to the extent of:

(c) Substituting State Airlines, Inc., for Piedmont Aviation, Inc., as to the whole or any part of the authority granted to Piedmont Aviation, Inc.; or directing that the Civil Aeronautics Board amend its Orders and Certificate to make such substitution of State Airlines, Inc., for Piedmont Aviation, Inc., as to the whole or any part of the authority granted to Piedmont Aviation, Inc.

Or, in the alternative, your petitioner further petitions that the court direct the Civil Aeronautics Board to reinstate petitioner's applications in Docket Nos. 1114, 1711 and 1776, to stay the effectiveness of the Orders of April 4, 1947, and December 12, 1947, and the temporary certificate issued to Piedmont Aviation, Inc., as to the whole or any part of such authorization of Piedmont Aviation, Inc., and to proceed further with a consideration of the facts to determine whether or not under all the facts and circumstances set forth in the record:

(a) the authority applied for by petitioner should be granted,

(b) the temporary certificate of public convenience and necessity of Piedmont Aviation, Inc., should be set aside or modified in whole or in part.

Points of Error.

6. As grounds for said petition, your petitioner respectfully states that on the record and proceedings before the Board and in the decision and Orders of April 4, 1947, and December 12, 1947, manifest errors occurred to the prejudice of your petitioner, and this petition assigns the following errors:

(1) The Board erred in denying the applications of your petitioner for a temporary certificate of public convenience and necessity for the routes above described and unlawfully withheld the issuance of such temporary certificate to your petitioner. Section 401(d) of the Civil Aeronautics Act of 1938, as amended (52 Stat. 987, 49 U. S. C. §481(d)) provides:

ISSUANCE OF CERTIFICATE.

"401(d) (1) The Authority (Board) shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority (Board) hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

"2. In the case of an application for a certificate to engage in temporary air transportation, the Authority (Board) may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and

able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority (Board) hereunder,"

Your petitioner had an application covering the transportation authorized, has been found by the Board to be "fit, willing and able" and the transportation covered by its application has been found by the Board to be required by the public convenience and necessity, all as provided in section 401(d)(1) and (2) above set forth. No other applicant has thus qualified under Section 401(d)(1) and (2).

In both the Board's original Opinion of April 4, 1947, and the Supplemental Opinion, of October 13, 1947, the Board impliedly found your petitioner to be "fit, willing and able" as provided in the statute above quoted. At page 3, lines 22-23 of the Second Supplemental Opinion dated December 12, 1947, the Board acknowledged that it had found your petitioner to be "fit, willing, and able."

The Board in the section of its original Opinion entitled "Local or Feeder Service", pages 45 to 61, *inter alia* found that the public convenience and necessity require that a local air service applicant be certificated over the routes therein specified, which are the same routes applied for by your petitioner.

As more easily shown by Map No. 5, Appendix F, the routes found required by the Board correspond to the routes sought by your petitioner, in almost every detail. There [illegible] no other applicant in this entire proceeding which had an application covering these routes.

Your petitioner is therefore the only qualified applicant for the routes, and it becomes mandatory under section 401(d)(1) and (2) of the Civil Aeronautics Act of 1938, as amended, that the Board issue a temporary certificate to your petitioner and the action of the Board in withholding such issuance of a certificate is arbitrary, capricious and an abuse of discretion, petitioner having met all of the require-

ments of Section 401 of the Civil Aeronautics Act of 1938, as amended.

(2) The Board had no jurisdiction to direct that a temporary certificate for certain routes be issued to Piedmont Aviation, Inc., and therefore deny petitioner's application, because Piedmont did not have on file an application covering the transportation authority awarded to it, as provided in Section 401(d) of the Civil Aeronautics Act of 1938, as amended (52 Stat. 987, 49 U. S. C. § 481(d)) above quoted.

But the Board has issued a certificate to Piedmont for far more and different authority than was applied for by Piedmont, having awarded to Piedmont the authority to conduct air transportation of persons, property and mail over a route system approximately 1719 miles in length. Of this amount 536 route miles as awarded bore some approximation to the persons, property, and mail routes applied for by Piedmont. Approximately 1183 route miles awarded were not applied for at all by Piedmont. Of the 28 points on the awarded routes, 19 were neither named nor in any way contemplated by the passenger property and mail application of Piedmont. Map No. 4 at Appendix E shows clearly the routes covered by the Piedmont applications compared with the routes awarded by the Board.

Section 401(b) and (c) of the Civil Aeronautics Act (52 Stat. 987, 49 U. S. C. § 481(b) and (c)) provide for the filing of applications for a certificate and due notice and hearing thereon. Pursuant to Section 401(b) the Board issued Economic Regulation Section 238.1 providing for the form of such application and the information to be contained therein. Such regulation provides among other things, that such application shall specify the terminal and intermediate points on a proposed route and the type or types of service (mail, passengers and property). In view of such section and particularly Section 401(d)(1) and (2) petitioner contends that the Board was without jurisdiction to authorize the issuance of a temporary certificate as large portions of the transportation routes authorized were not either the

"whole or any part of the transportation covered by the application" of Piedmont Aviation, Inc., as provided by Section 401(d)(1) and (2) of the Civil Aeronautics Act of 1938 as amended (52 Stat. 987, 49 U. S. C. § 481(d)).

(3) The Board erred in ordering the issuance of a temporary certificate to Piedmont Aviation, Inc., because such Orders were not made after due notice and a fair hearing to your petitioner, as required by Section 401(c) of the Civil Aeronautics Act of 1938, as amended (52 Stat. 987, 49 U. S. C. §481(a)), the Administrative Procedure Act, particularly Sections 5(a), and 7 (c), and the Fifth Amendment of the Constitution of the United States. There was no due notice or fair hearing as provided by such statutes and otherwise, because Piedmont Aviation, Inc., was awarded routes for which there was no application covering the routes, no exhibits, no testimony, no evidence, and no "willingness" demonstrated. Neither the examiners nor public counsel nor any party to the proceeding considered Piedmont Aviation, Inc., an applicant for the routes awarded. Piedmont Aviation, Inc., had applied for persons, property and mail routes in a generally north-south direction east of the Appalachians. The routes awarded are across the Appalachians and in a generally east-west direction. Map No. 4 at Appendix E shows clearly the routes covered by the Piedmont application compared with the routes awarded by the Board.

Your petitioner, State Airlines, had an application covering the awarded routes which was heard in the same proceeding and your petitioner was specifically found by the Board to be "fit, willing and able" to operate such routes. Your petitioner had previously had a hearing as to such routes, but action by the Board was, in 1945, deferred until this proceeding. By the award to Piedmont, and the denial of your petitioner's applications your petitioner was deprived of due notice and fair hearing. Your petitioner was thus deprived of an opportunity to submit evidence and to cross-examine or to provide rebuttal evidence as

to the qualifications of Piedmont to operate the extensive trans-Appalachian route system awarded to it, including the safety aspects of such operation with the single engine aircraft as proposed by Piedmont. No single engine aircraft has ever been certificated by the Civil Aeronautics Administration for scheduled air transportation of passengers in the continental United States. Your petitioner was also deprived of the opportunity of showing that Piedmont did not have such physical facilities or experienced personnel as were shown of record in this proceeding. Petitioner was further deprived of the opportunity of filing a brief or briefs and making oral argument on the basis of such evidence that it could have developed at the hearing against the selection of Piedmont Aviation, Inc., to engage in scheduled air transportation of persons, property and mail over the routes awarded.

There is no substantial evidence to support the finding at lines 20-22, page 11 of the Supplemental Opinion of December 12, 1947, that State "did not, in the course of the argument specify what the nature of such additional evidence or inquiries would have been". Both at the oral reargument and in its petition for reconsideration, State urged certain essential proof that it could have made had it known that Piedmont was to be considered an applicant for the routes awarded to it.

The Board further erred in this connection in failing to take cognizance or give any weight to the statement made at the reargument on behalf of petitioner that at the time of the hearing Piedmont did not own or rent a hangar in which it could get a DC-3 aircraft (being of the size and type which will necessarily be used) and that there was no evidence indicating that engines of the type which will necessarily be used, could be overhauled in Piedmont's shops. There is contained in Piedmont's proof of record in this connection, the statement that Piedmont had facilities for overhaul of all types of equipment. At reargument upon reconsideration counsel for petitioner pointed out that

had petitioner known that Piedmont was to be considered an applicant for these routes petitioner could have proved that such statement was not true.

The Board has virtually disregarded the applications, the proposed plans of operations and the evidence presented by State and Piedmont and awarded the certificate to Piedmont on the principal grounds of greater physical facilities and number of presently employed personnel. In view of this method of selection of Piedmont over State, it was a particularly flagrant error of the Board not to take judicial notice of a sworn written statement by a former Superintendent of Maintenance of Piedmont (Appendix Q) which was in the hands of the Board's Safety Bureau. Such statement indicated that the facilities and personnel of Piedmont, even four months after the Board's original decision, were not as shown by the record herein and included matters which State could have shown had State known that Piedmont was to be considered an applicant for the routes awarded.

On information and belief petitioner alleges that the Board, in making such award to Piedmont instead of your petitioner, did not act solely on the basis of the record in this case, but acted at least in part on the basis of a certain informal conference between a representative or representatives of Piedmont and a member or members of the Board, or its staff, with the knowledge of the Board members. Such conference on information and belief, was held at the Board at the request of the Board but without notice to your petitioner or the other parties to this case, at some time immediately prior to the issuance of the Board's original decision on April 4, 1947; the precise date and time of such conference is unknown to your petitioner and, in fact, the existence of such conference, has never been made public. The precise subject matter of such conference is unknown to your petitioner except that such conference pertained to the selection of Piedmont in this case. Petitioner

was thus further deprived of adequate notice and hearing as required by the Civil Aeronautics Act of 1938, the Administrative Procedure Act and the Fifth Amendment of the Constitution of the United States.

There is no substantial evidence to support the Board's finding on Page 11, lines 6-9, of its Supplemental Opinion of December 12, 1947, that "both parties [referring to State and Piedmont] must or should have been aware of the fact that they were competing applicants for routes in the Southeastern States area, and that the Board might choose one to the exclusion of the other as the operator of the routes established in the area", insofar as such finding refers to the major portion of the routes awarded to Piedmont and sought by State. Nor is there substantial evidence to support the findings and conclusions that State was not deprived of notice and hearing in such award to Piedmont.

(4) The Board erred in directing the issuance of a temporary certificate to Piedmont Aviation, Inc., in that there were no application, no exhibits, no cost estimates based on the routes authorized, no testimony or other evidence that Piedmont was an applicant, for a major part of the routes awarded. The opinions of the Board in this proceeding fail to find that Piedmont has presented a plan for the conduct of the service authorized. Therefore, the finding of Piedmont's fitness, willingness and ability to perform transportation properly on the routes not contained in its application is not supported by substantial evidence, and is not supported by sufficient findings. Section 401(d)(1) and (2) of the Civil Aeronautics Act of 1938, as amended (52 Stat. 987, 49 U. S. C. 481(b) and (c)).

(5) The Board erred in failing to make numerous findings of fact pertaining to your petitioner, State Airlines, Inc., based on substantial evidence of record which would have shown that the selection of State Airlines, Inc., for the routes in controversy was required by the public interest.

Some findings which could and should have been made

are as follows: (a) State was the only non-certificated air carrier in the country designated by the Air Transport Command for the carriage of military personnel; (b) State operated nearly four times as many charter airplane miles as Piedmont and State was one of the largest non-scheduled operators in the country; (c) State's "carefully prepared plan of operation of the route" and the "thoroughness" of its planning (as found by the Board at lines 18-20, page 4, and lines 2-4, page 5, of the Supplemental Opinion of December 12, 1947) indicated its superior "fitness, willingness and ability" to operate the routes and not only State's "enthusiasm and interest" as implied by the findings in the last paragraph of page 4 and the first paragraph of page 5 of the Supplemental Opinion of December 12, 1947; (d) State supplied realistic cost estimates for the routes; (e) State had made surveys regarding safety matters relative to aircraft, airports, navigation aids, weather and personnel for the routes, whereas Piedmont had not; (f) State had shown an historical and pioneering interest in scheduled air transportation over these routes and in the Southeastern area generally, whereas Piedmont had not; (g) State had proposed service over these routes with twin-engine aircraft which were clearly appropriate for such operations; (h) State had key personnel more familiar with operating conditions over the routes awarded, than had Piedmont.

(6) The Board erred in failing to make findings of fact pertaining to Piedmont based on substantial evidence of record which would have shown that Piedmont was not fit, willing and able to properly perform the transportation authorized. Findings of fact, based on substantial evidence of record or judicial notice, could have been made and should have been made that (a) Piedmont proposed to transport passengers in scheduled air transportation in Noorduyn Norseman V single-engine aircraft, which aircraft neither then nor now has a type certificate for such

in the continental United States.

service by the Civil Aeronautics Administration, (b) no air carrier operating certificate has ever been issued by the Civil Aeronautics Administration authorizing the scheduled air transportation of passengers in single-engined aircraft, (c) there was virtually no possibility of such a certificate being issued for the passenger routes proposed by Piedmont or for the passenger routes authorized by the Board, (d) the cost estimates and other financial estimates of Piedmont were based on the proposed use of such Noorduyn Norseman V aircraft, and that such cost estimates are not realistic and are inapplicable to the route system awarded because (i) the proposed aircraft was unusable, (ii) the costs were based on substantially different routes; (e) Piedmont had made no study of the weather, a fundamental consideration in nearly every phase of airline operation; (f) Piedmont showed no evidence on airport facilities either as to the routes it proposed or the routes awarded; (g) Piedmont had done no pioneering or development of scheduled air transportation in its area; (h) Piedmont showed no competent plan of operations; (i) Piedmont showed no time savings over existing surface transportation as to the passenger operations it proposed; (j) Piedmont showed no commitment that it would have any personnel previously experienced in scheduled air transportation; (k) the President of Piedmont actually testified that he expected to operate with 100 per cent capacity loads in scheduled air transportation on one route, for which Piedmont had applied, which demonstrates great ignorance of air transportation as no airline has ever operated at an average of 100 per cent capacity; (l) Piedmont showed no plans for the conduct of the service authorized made by competent personnel.

The Board erred in making certain essential findings of fact which are not supported by substantial evidence of record and in some instances no evidence of record.

At page 71, lines 10-13, of the Opinion of April 4, 1947, the Board found "Piedmont does not at the present time

own any aircraft suitable for use in its proposed services, but it does own approximately 50% of the required furniture and fixtures and all of the necessary shop equipment except a few special tools". The first part of the sentence regarding aircraft, is supported by the evidence. The last part of the sentence is correct only as to the services proposed by Piedmont which are not the same as those authorized by the Board's Order. Insofar as this sentence relates to the services authorized by the Board it is not supported by substantial evidence of the record. The finding was not modified by either of the Board's Supplemental Opinions in this case.

The Board erred in failing to find in connection with its finding as to the physical facilities of Piedmont (Pages 2 and 3 of the Supplemental Opinion of December 12, 1947), that such physical facilities possessed by Piedmont (including shop and overhaul facilities) as could be used in the operations certificated could not amount to a dollar value of more than $10,000, which is a minute percentage of the physical facilities which will necessarily be required.

The finding (lines 4-7, page 6 of the Supplemental Opinion of December 12, 1947) that Piedmont's "president testified, and its exhibits show, that the company preferred twin-engine aircraft, but that the single-engine proposal was dictated principally for pick-up service and as a matter of economy" is erroneous. The finding insofar as it may refer to Piedmont's passenger service proposal is not supported by substantial evidence. Piedmont proposed two different types of single-engine aircraft, one for the pick-up service proposal and the other for the passenger service proposal. Substantial evidence of record indicates that Piedmont's choice of single-engine equipment for passenger service was dictated principally by alleged safety considerations over the passenger routes proposed by Piedmont, as well as for reasons of economy. Piedmont's exhibits indicated no preference for twin-engine aircraft.

Piedmont's president's testimony as to preference for twin-engine equipment was qualified by the opinion that no suitable twin-engine aircraft was considered available for its proposed passenger operations.

The Board erred in its finding (lines 18-21 of page 5 of the Supplemental Opinion of December 12, 1947) that "on the issue of fitness, willingness and ability it has not been the practice of the Board in a proceeding of this type to require an applicant to establish beyond question that an air carrier operating certificate will be issued which will permit operations precisely as proposed", as such finding implies that Piedmont had presented to the Board a substantially appropriate aircraft proposal. The Board, in proceedings of this type, has rejected applicants, in whole or in part, because they proposed operations with equipment of a type which was not likely to be obtainable or usable in the near future. Piedmont's proposal should have been likewise rejected. In this proceeding, in the Supplemental Opinion of October 13, 1947, the Board rejected the application of All American Aviation, Inc. in part on the implied basis of safety considerations pertaining to its proposal.

At lines 5 and 6 of Page 72 of the Opinion of April 4, 1947, the Board found that both Piedmont and State had "demonstrated an energetic interest in the conduct of the operations." At lines 5 and 7 of Page 5 of the opinion of December 12, 1947, the Board found that "Piedmont, too has energetically prosecuted its application for a comprehensive system of routes covering a large part of the Southeastern States area." Such findings are not supported by substantial evidence insofar as a major portion of the routes awarded. Furthermore, Piedmont energetically opposed the granting of a major portion of such routes to any feeder airline.

(7) The Board erred in selecting Piedmont in that it did not exercise sound discretion in such selection in view

of the evidence of record as stated in sub-paragraphs 4, 5 and 6 above. Your petitioner contends that such selection of Piedmont must have been arbitrary, capricious, or through oversight.

As further evidence that the Board's action in selecting Piedmont to the exclusion of your petitioner was arbitrary and discriminatory, reference is made to the fact that in the original Opinion of April 4, 1947 of the Board it rejected the applications of Seaboard Air Transport and Blue Grass Airlines because the routes which those applicants sought did not conform to the routes found to be required by the Board. The Board in the last two sentences on page 68 of its Opinion of April 4, 1947 stated as to Seaboard:

> "This applicant does not propose service to such North Carolina cities as Raleigh, Durham, New Bern, Winston-Salem and Greensboro-High Point. While Seaboard could undoubtedly conduct a satisfactory service over the route which it has proposed, the evidence of record will not support a finding that it is capable of undertaking an operation of the scope and character we have found required."

Of the cities mentioned Piedmont applied for only one—Winston-Salem—and then on a north-south route, not east-west as awarded by the Board. On the other hand State specifically applied for all of those points and on an east-west route as awarded by the Board.

The Board also properly rejected Blue Grass from consideration, stating at page 66 of the Opinion of April 4, 1947:

> "The Blue Grass application which is also primarily a local and feeder service proposal, includes a series of routes in Kentucky, Tennessee and Missouri, none of which correspond to those which we have found should be authorized".

The Board should have similarly rejected the application of Piedmont. Its failure to do so was arbitrary.

Piedmont showed no plan of operations, whereas your petitioner did supply such proof. As a further example indicating that the Board's action in rejecting your petitioner's applications and selecting Piedmont was arbitrary or through oversight, the Board in rejecting another applicant, South East Airlines, at Page 67 of the Opinion of April 4, 1947 said:

> "The evidence presented by South East with respect to the requirements of local service in this area does not reflect the study and planning of details as do the exhibits of some of the other applicants. No showing whatsoever was made for the need of this applicant's proposed service, the effect upon existing air services, or that its operations will show a justifiable expectation of success at a reasonable cost to the Government."

These statements apply with equal force to Piedmont. No reason appears for not making similar findings as to Piedmont.

In rejecting the application of Virginia Central Airlines, the Board found as follows:

> "The testimony of Mr. Edmondson, the operations witness, who is undoubtedly a well-qualified pilot and fixed base operator, demonstrates that he is unfamiliar with airline operations."

Mr. Edmondson was the sole operations witness for Virginia Central and Piedmont's president, Mr. Davis was the sole operations witness for Piedmont. The same finding should have been made as to Mr. Davis as was made as to Mr. Edmondson.

No modification of such findings were made in the Board's Supplemental Opinions of October 13, 1947 and December 12, 1947.

(8) The Board's action in selecting Piedmont over your petitioner is further shown to be arbitrary and capricious by reason of the Board's action in another portion of this same proceedings. All of the *Southeastern States Case*

was not decided on April 4, 1947 but a portion was deferred for decision with the *Mississippi Valley Case*. That portion so deferred dealt with part of the most southern portion of the *Southeastern States Case*. There Southern Airways, Inc., an applicant in the Southeastern States case but an intervenor in the Mississippi Valley Case, was granted certain route extensions to New Orleans, which extensions were not covered by its application in the *Mississippi Valley Case*. However the Board found that Southern Airways "remained an applicant for service to New Orleans" and that it did "continue to press" in the *Mississippi Valley Case* "for the award of the routes to New Orleans". Although the Board made such award to Southern Airways, Inc., nevertheless the Board's Order of December 18, 1947 in that case, further amending the Order of April 4, 1947 in the *Southeastern States Case* as to paragraph 9 thereof, granted such authority with the following proviso:

> "*Provided, that* in the event any party in the *Mississippi Valley Case* Docket No. 548 *et al.* or in the *Southeastern States Case*, Docket 501 *et al.*, deeming itself aggrieved by the extensions authorized in this subparagraph (b), files within 20 days from December 18, 1947, a petition requesting the Board for further hearing, the Board will reopen said proceedings for further hearing on the question whether the public interest will best be served by the selection of Southern Airways, Inc. to provide service over such extensions. * * *" (Appendix P)

As shown by the separate concurring and dissenting opinions on this point, two of the four members of the Board as then constituted, expressed the opinions that even with such proviso the action of the Board deprived other applicants of fair notice and hearing as provided by statute and the Constitution.

As to the portion of the *Southeastern States Case* in which petitioner is interested, no such right to rehearing

was accorded either at the time of the original decision or since, although petitioner's petition for reconsideration contained a plea for rehearing.

(9) The Board erred otherwise in not selecting your petitioner to operate the routes found to be required by the public convenience and necessity. Your petitioner had conceived the principle and concept of a feeder airline route system across the Appalachians. Both the two Public Counsel and the two Examiners of the Board in their official brief and Report, respectively, had recommended that your petitioner be granted a temporary certificate for such routes, substantially as they were awarded to Piedmont Aviation, Inc. Piedmont Aviation, Inc., had not been recommended for any routes by the Public Counsel but had been recommended for entirely different routes by the Examiners. With all four Board staff officials having recommended your petitioner for these routes, the error of the Board in denying your petitioner's applications is particularly flagrant.

(10) The Board erred in failing to find, at Page 8 of the Supplemental Opinion of December 12, 1947, in connection with the route system sought by Piedmont (a) that the application did not include any routes or points in Ohio or Kentucky or any points northwest of Charleston, West Virginia, (b) that Piedmont's passenger proposal named only 9 out of 28 points certificated by the Board to Piedmont, (c) that none of the points at which passenger service were proposed were west of the Carolinas and Virginia except Knoxville, Tenn., and (d) that Piedmont contended there was no need for a feeder airline service west of Roanoke, Virginia. The Board erred in finding that Piedmont "recognized, however, that the Board might reach a different conclusion, and drafted its application to indicate its desire to be considered as requesting and as willing to operate those routes which the Board determined were needed" (lines 19-23, Page 8, Supplemental Opinion of

December 12, 1947) as such finding is not supported by any evidence. Furthermore, the record properly supports a finding to the contrary.

(11) The Board erred in discussing petitioner's organization (Page 3 of the Supplemental Opinion of December 12, 1947) in failing to give any weight to the fact that petitioner's numerous stockholders and directors, who were not employees, had a large amount of aviation and air transport experience. The Board further erred in failing to find or give cognizance to the fact that petitioner had a commitment from a former operations Vice-President of one of the oldest airlines in the country to join petitioner's organization, if petitioner was certificated. The Board erred in failing to find that, as well as its existing personnel, petitioner had commitments from other qualified personnel to join petitioner's organization, if petitioner was certificated.

In connection with the finding (lines 23-24, page 3 and lines 1-2 of page 4 of the Supplemental Opinion of December 12, 1947) that "State would be forced to build from a skeleton organization, acquiring physical facilities and hiring and training practically all of the personnel that would be needed for the large-scale operations authorized" the Board erred in failing to find that such finding applies equally well to Piedmont. In such connection the Board further erred in failing to take cognizance of or give any weight to the answer and Petition for Reconsideration of the City of Wilmington, N. C. (where petitioner's plans to have its base) in this proceeding which set forth in detail the facilities including hangar, shop and office facilities available to State, as well as a detailed numerical and classified listing of 1783 veteran and non-veteran airline personnel available to State at Wilmington, N. C.; and to take judicial notice of the fact that there is now no shortage of ample physical facilities and trained airline personnel available for airline operations.

The Board erred in failing to find, in connection with the finding as to Piedmont's operation of 3,200,000 miles

of instruction school flying (lines 18-20, page 2 of the Supplemental Opinion of December 12, 1947), that such flight instruction program had been curtailed prior to the hearing and that the former president of Piedmont, in charge of such program, had left the company prior to the hearing.

The finding that "State would need more time to set up operations than would Piedmont" (lines 2-3, Page 4 of the Supplemental Opinion of December 12, 1947) and the similar implied finding (lines 7-11, Page 73 of the orignal opinion of April 4, 1947) are not supported by substantial evidence. Furthermore, the Board erred in this connection in failing to grant rehearing on this issue or take any cognizance of or give any weight to petitioner's offer of proof contained in its petition for reconsideration filed with the Board May 8, 1947, that petitioner could set up airline operations in less time than Piedmont; and the Board failed to take any cognizance of the statement made on behalf of petitioner at reargument October 30, 1947 that it could set up airline operations within 4 months of the date of its certification by the Board.

(12) The significance of this case can scarcely be exaggerated. It involves a decision as to legal issues which are extremely important to both the air transport and motor carrier industries.

But more than this, the review involves the justice and propriety of the Civil Aeronautics Board's action in virtually disregarding the applications, testimony, exhibits, proposed plans of operations, aircraft proposals, proofs of public convenience and necessity, and its own previous decisions and policies in the award of a large feeder airline certificate of public convenience and necessity.

State Airlines, a company 67 per cent owned by veterans of World War II, had been publicly recommended for these routes by all of the Board's staff specialists assigned to the case. State Airlines had spent over $75,000 in addition to eight years of pioneering, research and development, and

six years as an applicant before the Board, before getting any decision on its application. State Airlines had presented to the Board one of the finest, most thorough and realistic new airline proposals ever presented to the Board in a proceeding of this type. Although the Board specifically found State Airlines to be adequately financed, and fit, willing and able to perform the service, the Board has passed over State Airlines in favor of an inferior applicant who did not apply for the routes, had no plans for the routes, had no adequate plans for any routes, and argued that a major portion of the routes were not needed as feeder airline routes. The Original and Supplemental Opinions of the Board are unfair, capricious, arbitrary and discriminatory in attempting to rationalize this most absurd and demoralizing decision.

Time of Filing Appeal.

7. This petition was not filed within 60 days from the date of service of the original order of the Board denying petitioner's application, namely April 8, 1947. Your petitioner had in effect been compelled to apply for reconsideration, reargument and rehearing of the Board's order by virtue of the provision of Section 1006(e) of the Civil Aeronautics Act as amended (52 Stat. 1024, 49 U. S. C. §646) providing that no objection to an order of the Board shall be considered by the court unless such objection shall have been urged before the Board. The points urged in this petition against the Board's order could not have been made before the Board except by petition for reconsideration and they were so made. The objections to the Board's order could not possibly have been anticipated because there was nothing in the record indicating that Piedmont Aviation, Inc., was to be considered for the award made to it, thereby excluding your petitioner.

Relying upon Administrative Procedure Act, Section 10(c) (5 U. S. C. 1009(c)) which provides that an appeal may be taken from the final action of an administrative

agency whether or not an application for reconsideration has been presented or determined, your petitioner filed a petition for review with this court on July 18, 1947, but such petition was dismissed on September 3, 1947, as premature. (Docket No. 9604) Your petitioner's petition for reconsideration was finally denied by the Board by order, dated December 12, 1947, served upon petitioner on December 15, 1947. Your petitioner submits that the 60 days within which this petition must be filed in this case has not expired. *Saginaw Broadcasting Co.* v. *Federal Communications Commission*, 96 F. 2d 554; *Braniff Airways, Inc. v. Civil Aeronautics Board*, 147 F. 2d 152, 78 U. S. App. D. C. 341 (1945). In any event, your petitioner submits that the facts herein stated constitute reasonable grounds for filing the petition at this time and if necessary, your petitioner respectfully requests leave of this Court to file this petition, all as provided in Section 1006 (a) of the Civil Aeronautics Act of 1938, as amended (52 Stat. 1024, 49 U. S. C. §646).

WHEREFORE, your petitioner prays that the said Orders of April 4, 1947 and December 12, 1947 of the Civil Aeronautics Board be reviewed by this Court, that a copy of this petition be transmitted to the Board and that a transcript of the record upon which said Orders were rendered be thereupon served and filed by the Board in this Court in accordance with Section 1006(c) of the Civil Aeronautics Act of 1938, as amended (52 Stat. 1024, 49 U. S. C. §646) that upon such review, the Court set aside and/or modify the Orders of April 4, 1947 and December 12, 1947 to the extent that they:

(a) Deny the application of State Airlines, Inc., for the whole or any part of the authority granted to Piedmont Aviation, Inc.;

(b) Direct the issuance of a temporary certificate of public convenience and necessity authorizing Piedmont Aviation, Inc., to engage in the air transportation of persons, property and mail over the following routes:

"(a) Between the alternate terminal points Cincinnati, Ohio, and Louisville, Ky., the intermediate points Lexington, Ky., London-Corbin, Ky., Middlesboro-Harlan, Ky., Bristol, Va., and (i) beyond Bristol, the intermediate points Asheville, N. C., Charlotte, N. C., Southern Pines-Pinehurst-Aberdeen, N. C., Fayetteville, N. C., and the terminal point Wilmington, N. C., and (ii) beyond Bristol, the intermediate points Winston-Salem, N. C., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Goldsboro, N. C., and the terminal point New Bern, N. C., and (during the period from May 1 to October 31 inclusive of each year) between the intermediate point New Bern, N. C., and the terminal point Morehead City, N. C.;

"(b) Between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky.-Huntington, W. Va., Charleston, W. Va., Beckley, W. Va., Princeton-Bluefield, W. Va., Roanoke, Va., Lynchburg, Va., Charlottesville, Va., Richmond, Va., and the terminal point Norfolk, Va.; and

"(c) Between the terminal point Roanoke, Va., the intermediate points Danville, Va., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Fayetteville, N. C., and the terminal point Wilmington, N. C."

and that the Court modify the Orders of April 4, 1947 and December 12, 1947, to the extent of:

(c) Substituting State Airlines, Inc., for Piedmont Aviation, Inc., as to the whole or any part of the authority granted to Piedmont Aviation, Inc., or directing that the Civil Aeronautics Board amend its Orders and temporary certificate to make such substitution of State Airlines, Inc., for Piedmont Aviation, Inc., as to the whole or any part of the authority granted to Piedmont Aviation, Inc.

Or, in the alternative, your petitioner further petitions that the Court direct the Civil Aeronautics Board to reinstate petitioner's applications in Docket Nos. 1114, 1711 and 1776, to stay the effectiveness of the Orders of April 4, 1947 and December 12, 1947, and the temporary certificate issued to Piedmont Aviation, Inc., as to the whole or any part of such authorization of Piedmont Aviation, Inc., and to proceed further with a consideration of the facts to determine whether or not under all the facts and circumstances set forth in the record:

(a) The authority applied for by petitioner should be granted,

(b) The temporary certificate of public convenience and necessity should be set aside or modified in whole or in part.

Your petitioner further prays such other and further relief as the Court may seem just and proper in the premises.

STATE AIRLINES, INC.,

By H. K. GILBERT, JR.,
President.

PHILIP SCHLEIT,
Attorney for Petitioner,
1625 K Street, N.W.,
Washington 6, D. C.

WILMER A. HILL,
AMES, HILL & AMES,
Attorneys for Petitioner,
238-241 Transportation Building,
Washington 6, D. C.

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG } ss:
CITY OF CHARLOTTE

H. K. Gilbert, Jr., being duly sworn, deposes and says: that he is President of State Airlines, Inc., the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to his knowledge, except as to matters stated to be alleged on information and belief, and as to those matters he believes it to be true; that the reason why this verification is made by deponent and not by the petitioner is that the petitioner is a corporation, and deponent is an officer thereof, to wit, the President.

H. K. GILBERT, JR.

Sworn and subscribed to before me this 17 day of January, 1948.

My Commission Expires May 5th, 1949.

W. W. ROSEMAN,
Notary Public for County of Mecklenburg, State of North Carolina.

Copy of the above petition received and acknowledged:

CIVIL AERONAUTICS BOARD,

By: _____

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APPENDIX

Appendix A.

Orders
Serial Number E-435

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
Washington, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 4th day of April, 1947.

Docket No. 501 et al.

In the matter of the application of

AERO PICKUP SERVICE CORPORATION,

and other applicants for certificates of public convenience and necessity, known as.

THE SOUTHEASTERN STATES CASE.

Order.

A full public hearing having been held in the above-entitled proceeding, and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That amended certificates of public convenience and necessity, in the forms attached hereto, shall be issued to American Airlines, Inc., for Route No. 4; to Delta Air Lines, Inc., for Routes Nos. 24 and 54; to Eastern Air Lines, Inc., for Routes Nos. 5, 6, 10, and 47; to Pennsylvania-Central Airlines Corporation for Route No. 51; and to Transcontinental & Western Air Inc., for Route No. 58;

2. That said amended certificates shall be signed on behalf of the Board by its Chairman, shall have affixed thereto the seal of the Board attested by the Secretary, and shall be effective on the 4th day of April, 1947;

3. That the application of Pennsylvania-Central Airlines Corporation to extend Route No. 55 from Birmingham, Ala., to Mobile, Ala., be and it is hereby deferred for consideration when the Boston-New York-Atlanta-New Orleans Case, Docket No. 730 et al., is submitted for decision;

4. That the application of Transcontinental & Western Air, Inc., to include Hagerstown, Md., and Cumberland, Md., as intermediate points on Route No. 61 be and it is hereby deferred for consideration when the Middle Atlantic Area Case, Docket No. 674 et al., is submitted for decision;

5. That the application of Southern Bus Lines in Docket No. 1779 be and it is hereby deferred for consideration with the Mississippi Valley Case, Docket No. 548 et al.;

6. That establishment of local service to cities in Mississippi, Louisiana, Alabama, and Georgia (other than that expressly provided for herein) be and it hereby is deferred for consideration with the Mississippi Valley Case, Docket No. 548 et al.;

7. That the joint applications of Frank W. Hulse and Southern Airways, Inc., in Docket No. 1898, for approval of the acquisitions of control arising from his control of Southern Airways, Inc., and other affiliated corporations, and for approval of the interlocking relationships existing by reason of the said Frank W. Hulse holding certain designated positions in Southern Airways, Inc., and other affiliated corporations, as set forth in said applications, be and they hereby are approved, subject to the conditions (a) that unless the prior approval of the Board shall have been obtained, commercial transactions between Southern Airways, Inc., and said affiliated corporations, or between Southern Airways, Inc., and said Frank W. Hulse, shall be limited to those in which the price of any unit of property involved

does not exceed $200, and the total annual expenditures involved in such commercial transactions by any of the parties shall not exceed $10,000 collectively, (b) that a statement of all transactions between the parties shall be submitted by Southern Airways, Inc., with its annual report each year, and (c) that the approval of the interlocking relationships granted herein shall continue unless revoked by the Board pursuant to section 248.1 of the Economic Regulations only so long as the said Frank W. Hulse continues in uninterrupted tenure thereof;

8. That the temporary certificate of public convenience and necessity, as amended, issued to Eastern Air Lines, Inc., on January 9, 1947, by Order Serial No. E-225, be and the same is hereby cancelled, effective thirty days after the date of issuance of this order;

9. That a temporary certificate of public convenience and necessity be hereafter issued, after the appropriate showing indicated in the opinion attached hereto as to the adequacy of airport facilities, to Southern Airways, Inc., authorizing it to engage in air transportation with respect to persons, property, and mail for a period of three years form the date of issuance, as follows:

"(a) Between the terminal point Memphis, Tenn., the intermediate points Tupelo, Miss., Columbus, Miss., Tuscaloosa, Ala., Birmingham, Ala., Gadsden, Ala., Atlanta, Ga., Athens, Ga., Greenwood, S. C., Greenville, S. C., Spartanburg, S. C., Rock Hill, S. C., and the terminal point Charlotte, N. C.

"(b) Between the terminal point Atlanta, Ga., the intermediate points La Grange, Ga., Columbus, Ga., Albany, Ga., Moultrie, Ga., Valdosta, Ga., and the terminal point Jacksonville, Fla.;

"(c) Between the terminal point Columbus, Ga., the intermediate points Macon, Ga., Augusta, Ga., Orangeburg, S. C., and the terminal point Charleston, S. C."

10. That a temporary certificate of public convenience and necessity be hereafter issued, after the appropriate showing indicated in the opinion attached hereto as to the adequacy of airport facilities, to Piedmont Aviation, Inc., authorizing it to engage in air transportation with respect to persons, property, and mail for a period of three years from the date of issuance, as follows:

"(a) Between the alternate terminal points Cincinnati, Ohio, and Louisville, Ky., the intermediate points Lexington, Ky., Bristol, Va., and (i) beyond Bristol, the intermediate points Asheville, N. C., Charlotte, N. C., Southern Pines-Pinehurst-Aberdeen, N. C., Fayetteville, N. C., and the terminal point Wilmington, N. C., and (ii) beyond Bristol, the intermediate points Winston-Salem, N. C., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Goldsboro, N. C., and the terminal point New Bern, N. C., and (during the period from May 1 to October 31 inclusive of each year) between the intermediate point New Bern, N. C., and the terminal point Morehead City, N. C.;

"(b) Between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky.-Huntington, W. Va., Charleston, W. Va., Beckley, W. Va., Princeton-Bluefield, W. Va., Roanoke, Va., Lynchburg, Va., Charlottesville, Va., Richmond, Va., and the terminal point Norfolk, Va.; and

"(c) Between the terminal point Roanoke, Va., the intermediate points Danville, Va., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Fayetteville, N. C., and the terminal point Wilmington, N. C."

11. That the applications in this proceeding, except to the extent to which they are herein granted or deferred, be and they are hereby denied:

By the Civil Aeronautics Board:

(SEAL) /s/ M. C. MULLIGAN,
M. C. Mulligan,
Secretary.

Appendix B.

DESCRIPTION OF ROUTES FOR PERSONS, PROPERTY AND MAIL COVERED BY PETITIONER'S APPLICATIONS:

(1) Between the terminal points Cincinnati, Ohio, and Norfolk, Va., with service at the intermediate points of Portsmouth, Ohio, Huntington, Charleston, Beckley, and Princeton-Bluefield, W. Va., and Roanoke, Lynchburg, Petersburg, Richmond, Va., 541 miles;

(2) Between the terminal points Louisville, Ky., and Wilmington, N. C., with service at the intermediate points of Knoxville, Tenn., and Asheville, Charlotte, Pinehurst-Southern Pines, and Fayetteville, N. C., 566 miles;

(3) Between the terminal points Roanoke, Va., and Wilmington, N. C., with service at the intermediate points of Danville, Va., and Durham-Raleigh and Fayetteville, N. C., 252 miles;

(4) Between the terminal points Norfolk, Va., and Louisville, Ky., with service at the intermediate points of Richmond, Petersburg, Lynchburg, and Roanoke, Va., Princeton-Bluefield, W. Va., and Lexington, Ky., 553 miles;

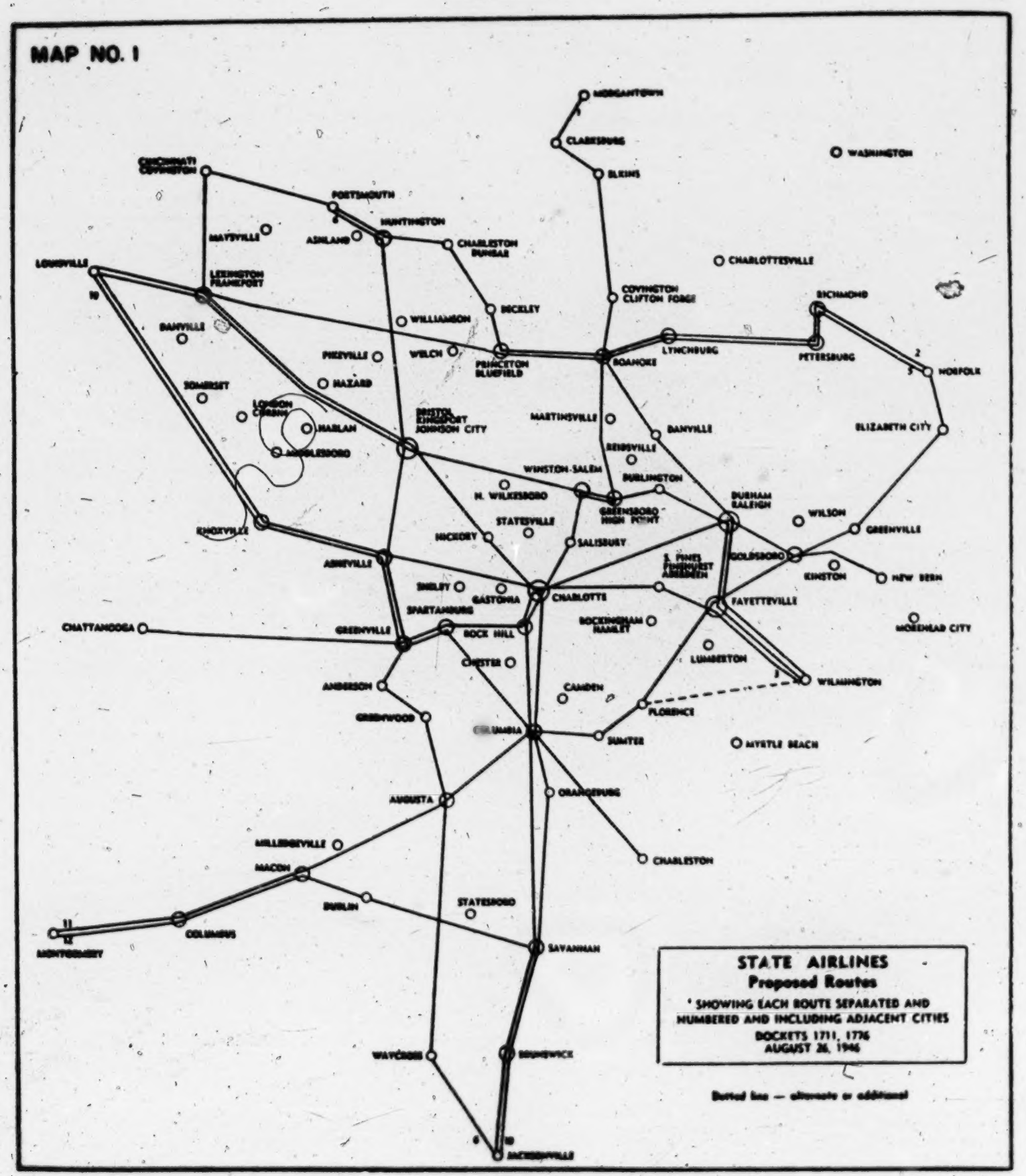
(5) Between the terminal points Louisville, Ky., and Wilmington, N. C., with service at the intermediate points of Lexington, Ky., Bristol, Va., and Winston-Salem, Greensboro, Burlington, Durham-Raleigh, and Fayetteville, N. C., 564 miles;

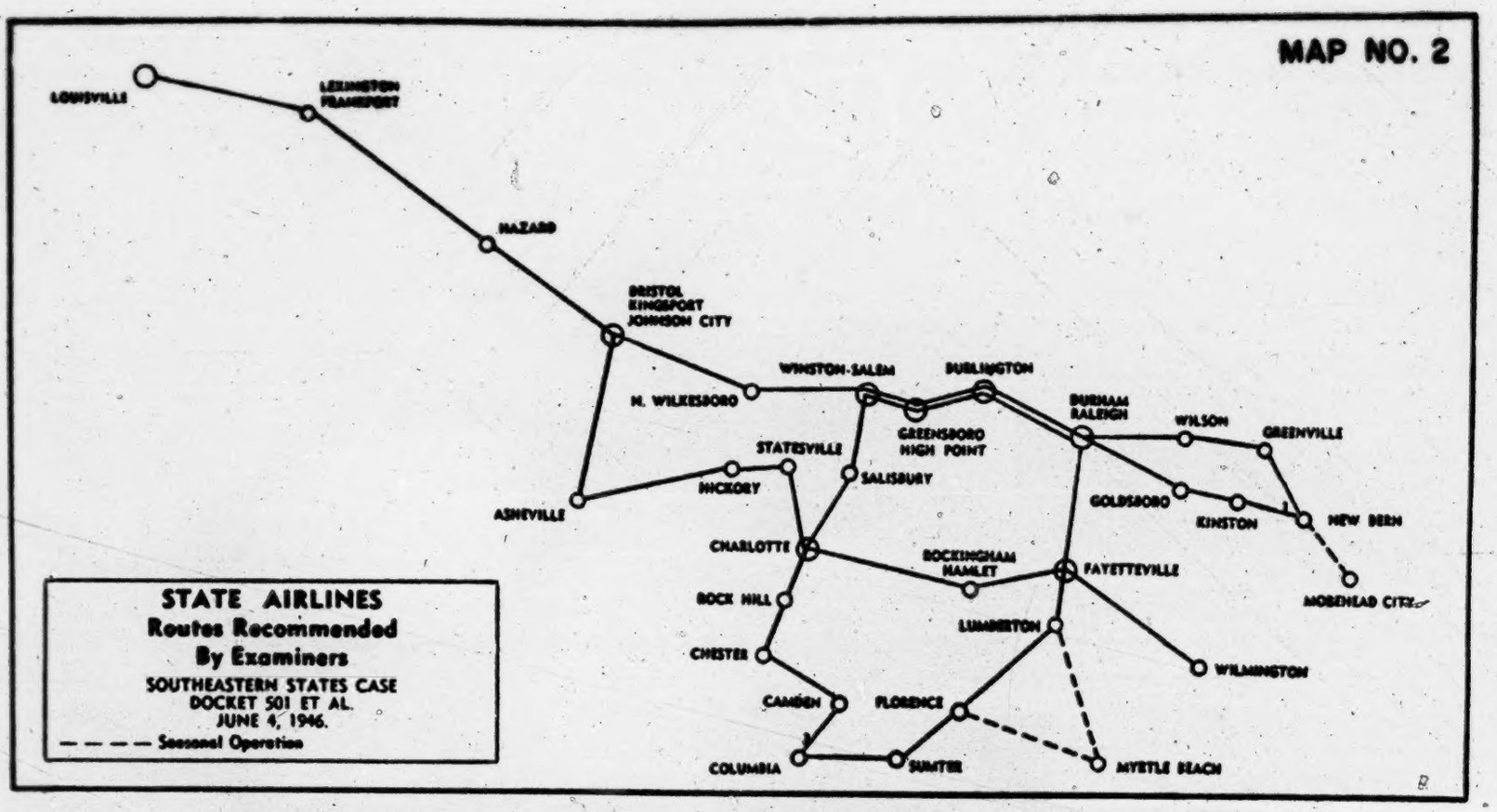
(6) Between the terminal points Cincinnati, Ohio, and Charleston, S. C., with service at the intermediate points of Lexington, Ky., Bristol, Va., Hickory and Charlotte, N. C., and Columbia, S. C., 522 miles;

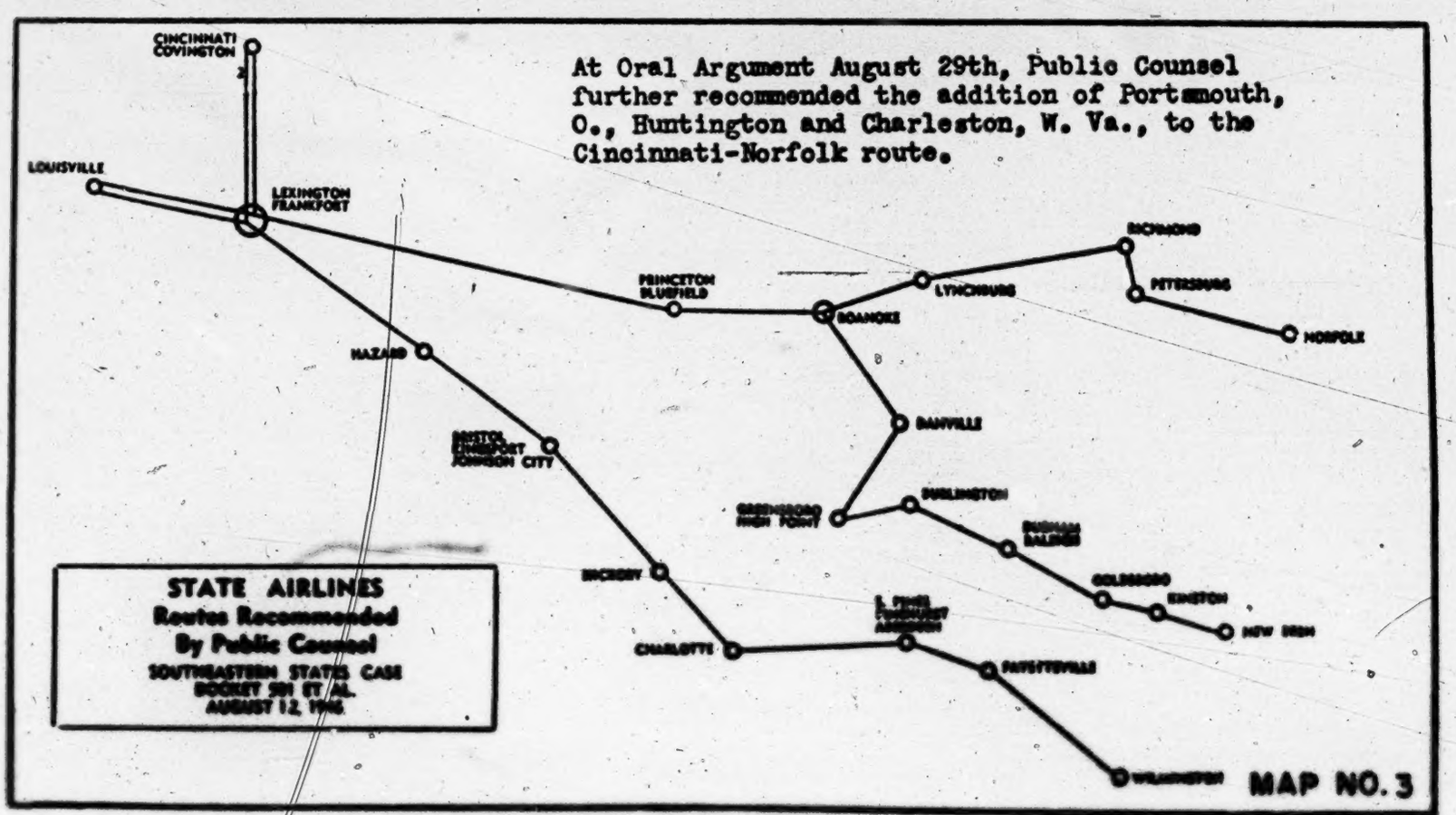
(7) Between the terminal points New Bern, N. C., and Chattanooga, Tenn., with service at the intermediate points of Goldsboro, Durham-Raleigh, and Charlotte, N. C., and Rock Hill, Spartanburg and Greenville, S. C., 501 miles;

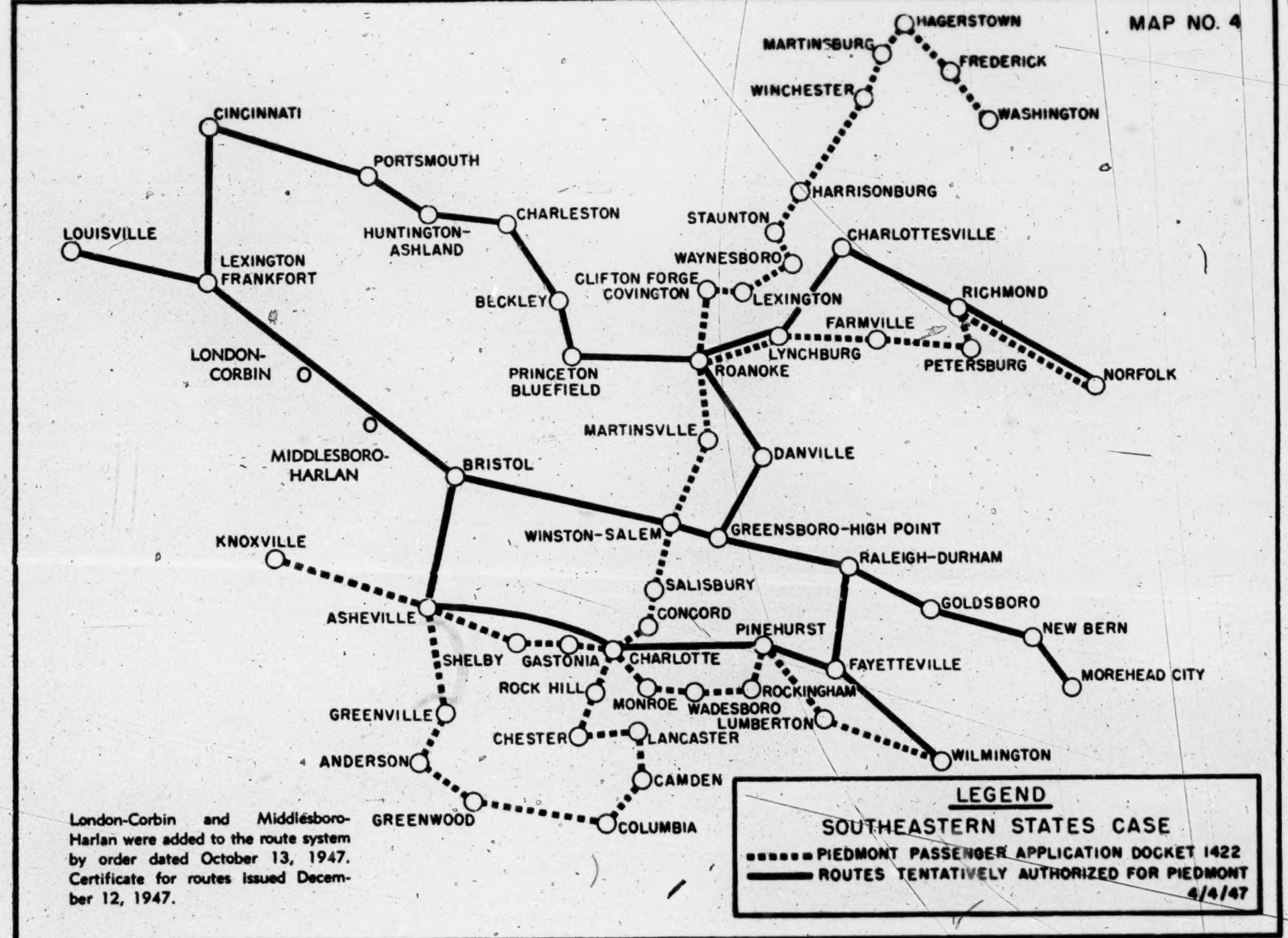
(8) Between the terminal points Norfolk, Va., and Montgomery, Ala., with service at the intermediate points of Elizabeth City, Greenville, Goldsboro, and Fayetteville, N. C., Florence, Sumter, and Columbia, S. C., and Augusta, Macon, and Columbus, Ga., 717 miles; and

(9) Between the terminal points Savannah, Ga., and Montgomery, Ala., with service at the intermediate points of Dublin, Macon and Columbus, Ga., 325 miles.

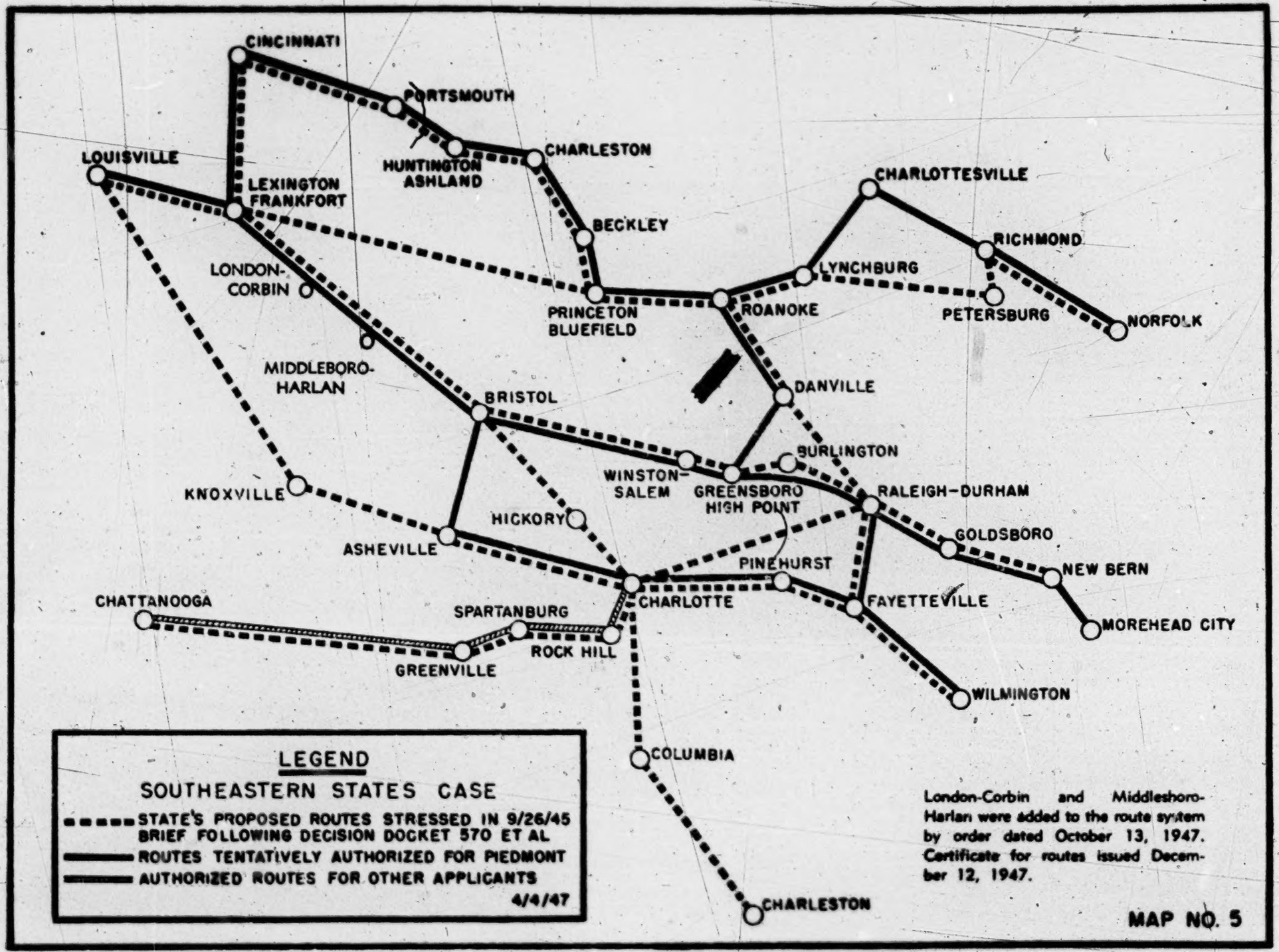

MAP NO. 1
MORGANTOWN
CLARKSBURG
WASHINGTON
ELKINS
CINCINNATI
COVINGTON
PORTSMOUTH
HUNTINGTON
MAYSVILLE
ASHLAND
CHARLESTON
DUNBAR
LOUISVILLE
LEXINGTON
FRANKFORT
CHARLOTTESVILLE
COVINGTON
CLIFTON FORGE
RICHMOND
BECKLEY
WILLIAMSON
DANVILLE
PRESTON
WELCH
PRINCETON
BLUEFIELD
ROANOKE
LYNCHBURG
PETERSBURG
NORFOLK
SOMERSET
HAZARD
LONDON
CORBIN
HARLAN
BRISTOL
KINGSPORT
JOHNSON CITY
MARTINSVILLE
DANVILLE
ELIZABETH CITY
MIDDLESBORO
REIDSVILLE
WINSTON-SALEM
BURLINGTON
N. WILKESBORO
DURHAM
RALEIGH
WILSON
GREENVILLE
KNOXVILLE
STATESVILLE
GREENSBORO
HIGH POINT
HICKORY
SALISBURY
ASHEVILLE
SOUTHERN PINES
PINEHURST
ABERDEEN
GOLDSBORO
KINSTON
NEW BERN
SHELBY
GASTONIA
CHARLOTTE
FAYETTEVILLE
SPARTANBURG
CHATTANOOGA
GREENVILLE
ROCK HILL
ROCKINGHAM
HAMLET
MOREHEAD CITY
CHESTER
LUMBERTON
ANDERSON
CAMDEN
WILMINGTON
GREENWOOD
FLORENCE
COLUMBIA
SUMTER
MYRTLE BEACH
AUGUSTA
ORANGEBURG
MILLEDGEVILLE
CHARLESTON
MACON
DUBLIN
STATESBORO
COLUMBUS
MONTGOMERY
SAVANNAH
WAYCROSS
BRUNSWICK
JACKSONVILLE
STATE AIRLINES
Proposed Routes
SHOWING EACH ROUTE SEPARATED AND NUMBERED AND INCLUDING ADJACENT CITIES
DOCKETS 1711, 1776
AUGUST 26, 1946
Dotted line — alternate or additional

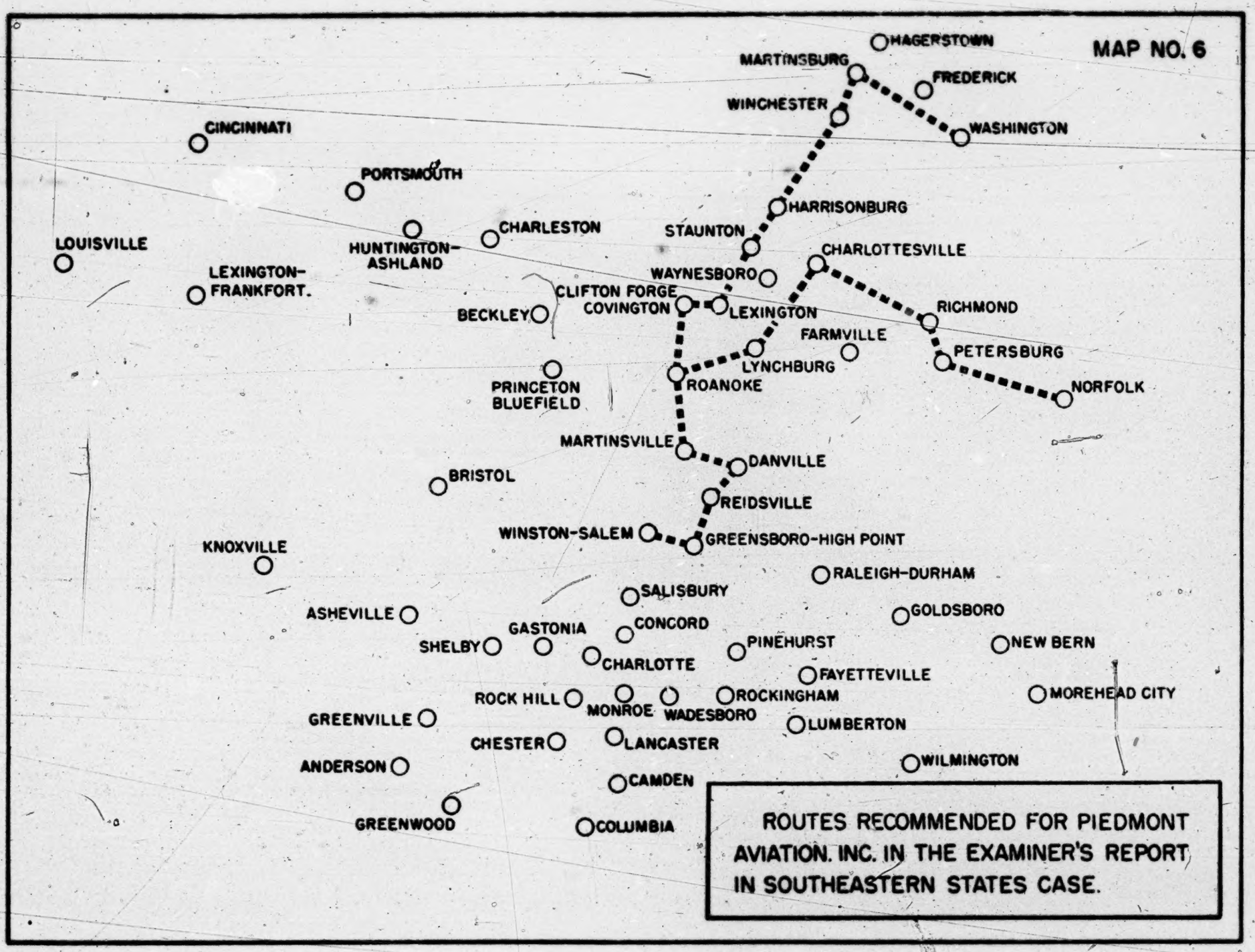

MAP NO. 2
LOUISVILLE
LEXINGTON
FRANKFORT
HAZARD
BRISTOL
KINGSPORT
JOHNSON CITY
WINSTON-SALEM
BURLINGTON
N. WILKESBORO
DURHAM
RALEIGH
WILSON
GREENVILLE
GREENSBORO
HIGH POINT
STATESVILLE
SALISBURY
HICKORY
ASHEVILLE
GOLDSBORO
KINSTON
NEW BERN
CHARLOTTE
ROCKINGHAM
HAMLET
FAYETTEVILLE
MOREHEAD CITY
ROCK HILL
LUMBERTON
CHESTER
WILMINGTON
CAMDEN
FLORENCE
COLUMBIA
SUMTER
MYRTLE BEACH
STATE AIRLINES
Routes Recommended
By Examiners
SOUTHEASTERN STATES CASE
DOCKET 501 ET AL.
JUNE 4, 1946.
— — — — Seasonal Operation


At Oral Argument August 29th, Public Counsel further recommended the addition of Portsmouth, O., Huntington and Charleston, W. Va., to the Cincinnati-Norfolk route.
CINCINNATI
COVINGTON
LOUISVILLE
LEXINGTON
FRANKFORT
RICHMOND
PETERSBURG
NORFOLK
PRINCETON
BLUEFIELD
LYNCHBURG
ROANOKE
HAZARD
DANVILLE
BRISTOL
KINGSPORT
JOHNSON CITY
GREENSBORO
HIGH POINT
BURLINGTON
DURHAM
RALEIGH
GOLDSBORO
KINSTON
NEW BERN
HICKORY
CHARLOTTE
FAYETTEVILLE
WILMINGTON
STATE AIRLINES
Routes Recommended
By Public Counsel
SOUTHEASTERN STATES CASE
DOCKET 501 ET AL.
AUGUST 12, 1946.
MAP NO. 3



London-Corbin and Middlesboro-Harlan were added to the route system by order dated October 13, 1947. Certificate for routes issued December 12, 1947.


CINCINNATI
PORTSMOUTH
LOUISVILLE
HUNTINGTON
ASHLAND
CHARLESTON
LEXINGTON
FRANKFORT
BECKLEY
CHARLOTTESVILLE
RICHMOND
LONDON-
CORBIN
LYNCHBURG
PRINCETON
BLUEFIELD
ROANOKE
PETERSBURG
NORFOLK
MIDDLEBORO-
HARLAN
DANVILLE
BRISTOL
BURLINGTON
WINSTON-
SALEM
GREENSBORO
HIGH POINT
RALEIGH-DURHAM
KNOXVILLE
HICKORY
GOLDSBORO
ASHEVILLE
PINEHURST
NEW BERN
CHATTANOOGA
CHARLOTTE
FAYETTEVILLE
SPARTANBURG
MOREHEAD CITY
ROCK HILL
GREENVILLE
WILMINGTON
COLUMBIA
CHARLESTON
LEGEND
SOUTHEASTERN STATES CASE
STATE'S PROPOSED ROUTES STRESSED IN 9/26/45 BRIEF FOLLOWING DECISION DOCKET 570 ET AL
ROUTES TENTATIVELY AUTHORIZED FOR PIEDMONT
AUTHORIZED ROUTES FOR OTHER APPLICANTS
4/4/47
London-Corbin and Middleshoro-Harlan were added to the route system by order dated October 13, 1947. Certificate for routes issued December 12, 1947.
MAP NO. 5


MAP NO. 6
HAGERSTOWN
MARTINSBURG
FREDERICK
WINCHESTER
WASHINGTON
CINCINNATI
PORTSMOUTH
HARRISONBURG
CHARLESTON
STAUNTON
LOUISVILLE
HUNTINGTON-
ASHLAND
CHARLOTTESVILLE
LEXINGTON-
FRANKFORT.
WAYNESBORO
CLIFTON FORGE
COVINGTON
LEXINGTON
RICHMOND
BECKLEY
FARMVILLE
PETERSBURG
LYNCHBURG
PRINCETON
BLUEFIELD
ROANOKE
NORFOLK
MARTINSVILLE
DANVILLE
BRISTOL
REIDSVILLE
WINSTON-SALEM
GREENSBORO-HIGH POINT
KNOXVILLE
RALEIGH-DURHAM
SALISBURY
ASHEVILLE
GOLDSBORO
GASTONIA
CONCORD
SHELBY
PINEHURST
NEW BERN
CHARLOTTE
FAYETTEVILLE
ROCK HILL
MONROE
WADESBORO
ROCKINGHAM
MOREHEAD CITY
GREENVILLE
LUMBERTON
CHESTER
LANCASTER
ANDERSON
WILMINGTON
CAMDEN
GREENWOOD
COLUMBIA
ROUTES RECOMMENDED FOR PIEDMONT AVIATION. INC. IN THE EXAMINER'S REPORT IN SOUTHEASTERN STATES CASE.

Appendix H.

DESCRIPTION OF ROUTES FOR PERSONS, PROPERTY AND MAIL COVERED BY APPLICATION OF PIEDMONT AVIATION:

Route 1. Between the terminals of Winston-Salem, N. C., and Washington, D. C., via the intermediate points Martinsville, Va.; Roanoke, Va.; Covington-Clifton Forge, Va.; Lexington, Va.; Waynesboro, Va.; Staunton, Va.; Harrisonburg, Va.; Winchester, Va.; Martinsburg, W. Va.; Hagerstown, Md.; Frederick, Md.

Route 2. Between the terminals of Norfolk, Va., and Roanoke, Va., via the intermediate points Richmond, Petersburg; Farmville; Lynchburg, Va.

Route 3. Between the terminals of Wilmington, N. C., and Knoxville, Tenn., via the intermediate points Lumberton, N. C.; Pinehurst, N. C.; Rockingham, N. C.; Wadesboro, N. C.; Monroe, N. C.; Charlotte, N. C.; Gastonia, N. C.; Shelby, N. C.; Asheville-Hendersonville, N. C.

Route 4. Between the terminals of Columbia, S. C., and Asheville-Hendersonville, N. C., via the intermediate points Greenwood, S. C.; Anderson, S. C.; Greenville, S. C.

Route 5. Between the terminals of Winston-Salem, N. C., and Columbia, S. C., via the intermediate points Salisbury, N. C.; Concord, N. C.; Charlotte, N. C.; Rock Hill, S. C.; Chester, S. C.; Lancaster, S. C.; Camden, S. C.

Appendix I.

Regulations
Serial Number 284

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

At a session of the Civil Aeronautics Board
held in its office in Washington, D. C.
on the 25th day of August, 1943.

The Civil Aeronautics Board, acting pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 205(a) and 401 thereof, and deeming its action necessary to carry out the provisions of said Act and to exercise its powers and perform its duties thereunder, hereby makes and promulgates the following regulation:

AMENDMENT NO. 3 OF SECTION 238.1
OF THE ECONOMIC REGULATIONS

APPLICATIONS FOR CERTIFICATES OF
PUBLIC CONVENIENCE AND NECESSITY

Effective August 25, 1943, section 238.1 of the Economic Regulations is hereby amended in its entirety to read as follows:

SECTION 238.1 OF THE
ECONOMIC REGULATIONS

APPLICATIONS FOR CERTIFICATES OF
PUBLIC CONVENIENCE AND NECESSITY.

(a) *Formal Requirements of Applications.* Applications for certificates of public convenience and necessity or amendments thereof, shall meet the requirements set forth

in section 285.3 of the Economic Regulations as to (1) execution, number of copies and service (2) verification; and (3) formal specifications of papers. All pages of an application shall be consecutively numbered and the application shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits shall be deemed to constitute a part of the application to which they are attached.

(b) *Amendments to Application.* If, after receipt of any application, the Board shall request the applicant to supply it with additional information, such information shall be furnished in the form of an amendment to the original application. All amendments to applications shall be consecutively numbered and shall comply with the requirements of this Regulation as to form, number of copies, verification, and in all other essential respects.

(c) *Incorporation by Reference.* In general it is desirable that incorporation by reference shall be avoided. However, where two or more applications are filed by a single carrier, lengthy exhibits or other documents attached to one may be incorporated in the others by reference if that procedure will substantially reduce the cost to the applicant.

(d) *General Provisions Concerning Contents.* The statements contained in an application shall be restricted to significant and relevant facts. They shall be free from argumentation or from expressions of opinion, except such as may be required by this Regulation.

Requests for authority to engage in air transportation between points in the continental United States and requests for authority to engage in air transportation to or from any point outside the continental United States shall not be included in the same application.

Each application shall give full and adequate information with respect to each of the items set forth in this paragraph. In addition, the application may contain such other

information and data as the applicant shall deem necessary or appropriate in order to acquaint the Board fully with the particular circumstances of its case. Among other things, every such application shall contain the following information:

(1) The full name and address of the applicant, the nature of its organization (individual, partnership, corporation, etc.) and the name of the State under the laws of which it is organized.

(2) A statement that the applicant is a citizen of the United States, as defined by section 1(13) of the Act. It is not required that the application shall contain all the evidence which the applicant is prepared to present at the hearing or otherwise in support of such statement, but the application shall at least indicate the nature and result of its investigations in that matter and the character of the evidence it will be prepared to present in support of citizenship.

(3) An adequate identification of each route for which a certificate is desired, specifying the type or types of service (mail, passengers, and property) to be rendered on each such route, and whether or not such services are to be rendered in scheduled operations. The identification of each route shall name every terminal and intermediate point to be included in the certificate for which application is made.

(4) A map (which may be attached as an exhibit) drawn approximately to scale showing all terminal and intermediate points to be served, giving the approximate mileages between all adjacent points, and the principal over-all distances.

(5) A statement as to the type of aircraft applicant proposes to use in the new service and whether such aircraft is presently owned by the applicant.

(6) If applicant does not hold a certificate of public convenience and necessity authorizing air transportation, the name and type of business of any affiliate, subsidiary, or principal stockholder of applicant engaged in any form of transportation as a common carrier or engaged in any phase of aeronautical activity.

(e) *Applications for Operations Other Than Between Fixed Points.* An application for a certificate authorizing operations other than between fixed points, or not having terminal or intermediate points capable of precise description, need comply with the provisions of clauses 3 and 4 of paragraph (d) of this Regulation only to the extent that it shall clearly describe the authorization sought by the applicant.

By the Civil Aeronautics Board:

/s/ FRED A. TOOMBS,
Fred A. Toombs,
Secretary.

(SEAL)

Appendix J.

SECTION 285.11 OF THE ECONOMIC REGULATIONS.

PETITION FOR REHEARING, REARGUMENT, OR RECONSIDERATION.

(a) *Parties.* Any party may petition for rehearing, reargument, or reconsideration of any final order by the Board in a proceeding, or for further hearing before decision by the Board.

(b) *Contents of Petitions.*

(1) The matters of record claimed to have been erroneously decided must be specified, and the alleged errors, and the grounds relied upon must be briefly and specifically stated in the petition.

(2) If a final order of the Board is sought to be vacated or modified by reason of matters which have arisen since the hearing, or of a consequence which would result from a compliance therewith, or both, the new matter, the resulting consequence, or both, which are relied upon by the petitioner must each be set forth in the petition. Where the petition is based wholly or in part upon new matter, the petition must contain a statement that the petitioner, with due diligence, could not have known or discovered the new matter prior to the time of the hearing.

(3) The petition must set forth a brief statement of the relief sought by the petitioner and conform to requirements of section 285.3.

(c) *Filing and Service of Petitions.* Such petition for rehearing, reargument, or reconsideration, must be filed within thirty days after service of the order sought to be vacated or modified. After the expiration of said thirty days, such a petition may be filed only by leave of the Board granted pursuant to formal application upon a showing of reasonable grounds for failure to file the petition within the prescribed thirty-day period. Any such petition or application shall be served by the petitioner or applicant upon all parties to the proceeding or their attorneys of record.

(d) *Stay of Orders.* No petition for rehearing, reargument, or reconsideration filed in accordance with this section, or the granting thereof, shall operate as a stay of the effective date of the final order sought to be modified or vacated by such petition, unless specifically so ordered by the Board.

Appendix K.

CIVIL AERONAUTICS BOARD
Washington, D. C.

August 6, 1947

Mr. Thomas H. Davis, President
Piedmont Aviation, Inc.
Smith Reynolds Municipal Airport
Winston-Salem, North Carolina

Dear Mr. Davis:

As you are aware, State Airlines, Inc., filed with the Board on May 8, 1947, a petition for reconsideration of the Board's opinion and order in the Southeastern States Case, Docket No. 501, et al., insofar as that decision awarded a route to Piedmont rather than to State. On the same day, State also petitioned the Board to issue an order staying and restraining Piedmont from making any expenditures in reliance upon the Board's order in that case. On June 20, 1947, State filed with the Board a third petition requesting an immediate decision on its earlier petitions. Thereafter, on July 18, 1947, before any action had been taken by the Board on any of the foregoing petitions, State filed in the United States Court of Appeals for the District of Columbia a petition for review of the Board's decision in the Southeastern States Case, and thereafter filed with the Board a petition requesting that the Board stay the issuance of any certificate to Piedmont pending disposition by the Court of State's petition for review.

You have responded to that petition informally by letter urging the Board not to issue any such stay, and informing the Board that Piemont has made preparations to commence operations which involve expenditures and commitments.

Under these circumstances, the Board believes it appropriate to call your attention to the fact that a petition for reconsideration of the Board's order of April 4, 1947, in the Southeastern States Case (Docket No. 501, et al.) was timely filed by State and has not been disposed of. The Board wishes also to advise you that should the jurisdiction over its order of April 4, 1947, be returned to the Board from the court which now has jurisdiction pursuant to the filing of State Airlines' petition for review, the Board will consider State's petition for reconsideration upon its merits. In so doing the Board will of necessity take account of the fact that Piedmont has acted with notice that the order was subject to review and that the preservation of the right to administrative reconsideration requires that any effective review not be defeated by intervening action of one of the parties taken in purported reliance upon the order.

The foregoing is not in any respect an indication of the Board's position with respect to the merits of the petitions for reconsideration which have been filed with the Board, but is only to assure that there is a full understanding of the status of the proceeding.

A copy of this letter is being sent to State Airlines, Inc.

Sincerely yours,

JAMES M. LANDIS
Chairman

CC MR. SCHLEIT
MR. HILL
MR. MURCHISON

Appendix L.

Orders
Serial Number E-774

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

Washington, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C., on
the 27th day of August, 1947.

Docket No. 501 et al.

In the matter of the application of AERO PICKUP SERVICE CORPORATION and other applicants for certificates of public convenience and necessity, known as THE SOUTHEASTERN STATES CASE.

Order Postponing Action on Motion of Piedmont Aviation, Inc. for Issuance of a Certificate of Public Convenience and Necessity.

IT APPEARING TO THE BOARD:

(1) That by order dated April 4, 1947 (Order Serial No. E-435), in the above-entitled proceeding, the Board authorized the issuance of a temporary certificate of public convenience and necessity to Piedmont Aviation, Inc., after further showing as to the adequacy of airport facilities at the points named in said order;

(2) That parties to the above-entitled proceeding, including State Airlines, Inc., have filed petitions for reconsideration of the Board's order and opinion in said proceeding, including reconsideration of the authorization for the issuance of said certificate to Piedmont Aviation, Inc., and that such petitions are pending before the Board;

(3) That State Airlines, Inc., a party to said proceeding, filed with the Court of Appeals for the District of Colum-

bia on July 18, 1947, a petition for review of the Board's order in said proceeding insofar as it authorized issuance of a certificate to Piedmont Aviation, Inc., rather than to State Airlines, Inc.;

(4) That the Board on August 6, 1947, advised Piedmont Aviation, Inc., by letter signed by the Chairman that such petitions for reconsideration have not been disposed of and that Piedmont in making preparations to commence operations is on notice thereof;

(5) That Piedmont Aviation, Inc., filed with the Board on August 22, 1947, a motion for issuance of the certificate of public convenience and necessity authorized in the above-entitled proceedings;

(6) That said Court of Appeals has not yet rendered a decision on the matters now pending before it in connection with the above-entitled proceeding; and

The Board, upon consideration of the foregoing matters, finding that it would not be in the public interest to take action at the present time on said motion of Piedmont Aviaion, Inc.;

IT IS ORDERED, That action on said motion of Piedmont Aviation, Inc., be postponed until such portions of the aforesaid petitions for reconsideration as request reconsideration of the authorization for the issuance of a certificate of public convenience and necessity to Piedmont Aviation, Inc., now pending before the Board have been disposed of.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. MULLIGAN
Secretary

(SEAL)

LEE, Member, dissenting.

Appendix M.

Orders
Serial Number E-873

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

Washington, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C., on
the 13th day of October, 1947.

Docket No. 501 et al.

In the matter of the application of AERO PICKUP SERVICE CORPORATION and other applicants for certificates of public convenience and necessity, known as THE SOUTHEASTERN STATES CASE.

Order.

A full public hearing having been held in the above-entitled proceeding;

The Board, upon consideration of the record, having issued its opinion April 4, 1947 (Order Serial No. E-435), containing its findings, conclusions, and decision, and in accordance with said opinion having issued amended certificates of public convenience and necessity, and selected certain applicants to engage in air transportation over certain designated routes subject to further showings as as to the adequacy of airport facilities;

Petitions for rehearing, reargument, and/or reconsideration having been filed by Delta Air Lines, Inc., City of Charlotte, N. C., Bluegrass Airlines, All American Aviation, Inc., City of Augusta, Ga., Sheffield, Ala., Campbell County, Ky., Commonwealth Air Transport, Inc., Gillespie Airways, Eastern Air Lines, Inc., Southern Aviation Corporation, and State Airlines, Inc.;

Petitions for reconsideration having been filed by City of Evansville, Ind., City of Chattanooga, Tenn., City of

Spartanburg and Spartanburg Chamber of Commerce, S. C., South East Airlines, Inc., Greenville, S. C., Chamber of Commerce, City of Memphis, Tenn., City of Norfolk, Va.;

Petitions for leave to intervene and for rehearing, reargument and/or reconsideration having been filed by the Kentucky Chamber of Commerce, Kentucky Municipal League, City of Covington, Ky., City of Newport, Ky., City of Pikeville, Ky., Chamber of Commerce of Hazard, Ky., City and County of Harlan, Ky., City of Hazard, Ky., Kanawha Coal Operators Association, City of Middlesboro and County of Bell, Ky., City of Welch, W. Va., City of Dyersburg, Tenn., Chamber of Commerce of Memphis, Tenn., Chamber of Commerce of Charleston, W. Va., Tennessee Bureau of Aeronautics, Pitt County-City of Greenville Airport Commission and Greenville Chamber of Commerce, S. C., City of Mt. Pleasant, Tenn., Airport Committee of the Columbia, Tenn., Chamber of Commerce, and the Kentucky Aeronautics Commission;

A petition for leave to intervene having been filed by the Chamber of Commerce of Hickory, N. C.;

A petition having been filed by the City of Wilmington, N. C., in support of the petition of State Airlines, Inc., and in opposition to the petition of Delta Air Lines, Inc.;

The Board having reconsidered the entire record in said proceeding and upon reconsideration of said record having issued its supplemental opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That amended certificates of public convenience and necessity in the forms attached hereto, shall be issued to Eastern Air Lines, Inc., for Routes Nos. 5 and 10, and to Pennsylvania-Central Airlines Corporation for Route No. 51;

2. That said amended certificates shall be signed on behalf of the Board by its Chairman, shall have affixed thereto the seal of the Board attested by the Secretary, and shall be effective on the date of this order;

3. That the route awarded to Piedmont Aviation, Inc., pursuant to paragraph 10 of the Board's order Serial No. E-435, dated April 4, 1947, be amended to include Middlesboro-Harlan, Ky., and London-Corbin, Ky., as intermediate points between Bristol, Va., and Lexington, Ky.;

4. That that portion of the petition of State Airlines, Inc., requesting reargument and reconsideration with respect to the Board's decision and order Series No. E-435, dated April 4, 1947, insofar as said order failed to award to State Airlines, Inc., the authority granted to Piedmont Aviation, Inc., is granted to the extent of hearing argument by State and Piedmont, said argument to be limited to the questions of (a) whether the public interest requires the selection of State or Piedmont, and (b) whether the Board committed legal error by awarding the route to Piedmont; and

5. That the aforesaid petitions, except to the extent that the action taken herein constitutes the granting hereof, be and they are hereby denied.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. MULLIGAN
Secretary

(SEAL)

Appendix N.

Orders
Serial Number E-1056

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

Washington, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C., on
the 12th day of December, 1947.

Docket No. 501 et al.

In the matter of the application of AERO PICKUP SERVICE CORPORATION and other applicants for certificates of public convenience and necessity, known as THE SOUTHEASTERN STATES CASE.

Order Issuing Temporary Certificate.

1. A full public hearing having been held in the above-entitled proceeding;

2. The Board, upon consideration of the record, having issued its opinion on April 4, 1947, containing its findings, conclusions, and decision, and in accordance with said opinion having issued an order (Order Serial No. E-435) directing, *inter alia*, that a temporary certificate of public convenience and necessity be issued to Piedmont Aviation, Inc. (hereinafter referred to as "Piedmont"), after an appropriate showing as to adequacy of airport facilities;

3. State Airlines, Inc. (hereinafter referred to as "State"), having filed with the Board on May 8, 1947, a petition for rehearing, reargument and reconsideration of said decision and order insofar as it failed to award to State the authority granted to Piedmont;

4. State having further filed with the Board (a) on May 8, 1947, an application for an order restraining and stay-

ing Piedmont from making any capital expenditures or obligating itself in reliance upon the Board's aforementioned order of April 4, 1947, pending decision on State's petition for rehearing, reargument and reconsideration, and (c) on July 21, 1947, a petition for stay of issuance of the aforementioned temporary certificate to Piedmont;

5. Piedmont having filed with the Board on August 14, 1947, as amended on November 7, 1947, a motion requesting the issuance forthwith of the aforementioned certificate on the ground that Piedmont had made appropriate showing as to the adequacy of airport facilities;

6. Eastern Air Lines, Inc. (hereinafter referred to as "Eastern"), having filed with the Board on August 22, 1947, a motion to dismiss the aforementioned motion of Piedmont on the grounds, *inter alia*, that (a) Piedmont had not made an appropriate showing as to adequacy of airports, and (b) the Board should not issue a certificate to Piedmont until disposition of the petitions for rehearing, reargument and reconsideration then pending in this proceeding;

7. State having filed with the Board on August 22, 1947, an answer in opposition to Piedmont's aforementioned motion of August 14, 1947, for issuance of a temporary certificate;

8. The Board by order dated August 27, 1947 (Order Serial No. E-774), having postponed action on the aforesaid motion of Piedmont until disposal of such portions of the then pending petitions for reconsideration as sought reconsideration of the Board's order of April 4, 1947, making the original award to Piedmont;

9. The Board having on October 13, 1947, issued a supplemental opinion and order (Order Serial No. E-873) granting, *inter alia*, the aforementioned petition of State for rehearing, reargument and reconsideration, to the extent of hearing argument on the questions of (a) whether

the public interest required the service of State or Piedmont, and (b) whether the Board committeed legal error by awarding the route to Piedmont;

10. The Board, on October 29-30, 1947, having heard oral argument on the aforesaid questions and, upon the reconsideration of the entire record in this proceeding, having issued a second supplemental opinion containing its findings, conclusions and decision, which is attached hereto and made a part hereof; and

11. The Board finding that Piedmont has made an appropriate showing as to the adequacy of airport facilities contemplated by the Board's aforementioned order of April 4, 1947;

IT IS ORDERED:

1. That a temporary certificate of public convenience and necessity in the form attached hereto shall be issued to Piedmont Aviation, Inc., for route No. 87;

2. That said certificate shall be signed on behalf of the Board by the Chairman, and shall have affixed thereto the seal of the Board, attested by the Secretary;

3. That the petition of State Airlines, Inc., of May 8, 1947, for rehearing, reargument and reconsideration, except as granted by the Board's order of October 13, 1947 (Order Series No. E-873), be and it is hereby denied;

4. That the aforementioned application of State Airlines, Inc., of May 8, 1947, for a restraining order, and the aforementioned motion of State Airlines, Inc., of June 20, 1947, for immediate decision, be and they are hereby dismissed;

5. That the aforementioned petition of State Airlines, Inc., of July 21, 1947, for stay of issuance of a temporary certificate to Piedmont, except as granted, in effect, by the Board's aforementioned order of August 27, 1947 (Order Serial No. E-774), be and it is hereby dismissed;

6. That the motion of Eastern Air Lines, Inc., of August 22, 1947, for dismissal of the aforementioned motion of Piedmont for issuance of a certificate, be and it is hereby denied.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. MULLIGAN
Secretary

(SEAL)

Appendix O.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

Washington, D. C.

Temporary Certificate of Public Convenience and Necessity.

PIEDMONT AVIATION, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

(1) Between the alternate terminal points Cincinnati, Ohio, and Louisville, Ky., the intermediate points Lexington, Ky., London-Corbin, Ky., Middlesboro-Harlan, Ky., and Bristol, Va., and (a) beyond Bristol, Va., the intermediate points Asheville, N. C., Charlotte, N. C., Southern Pines-Pinehurst-Aberdeen, N. C., and Fayetteville, N. C., and the terminal point Wilmington, N. C., and (b) beyond Bristol, Va., the intermediate points Winston-Salem, N. C., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Goldsboro, N. C., and New Bern, N. C., and, from May 1 to October 31, inclusive, of each year, the terminal point Morehead City, N. C.;

(2) Between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky.-Huntington, W. V., Charleston, W. Va., Beckley, W. Va., Princeton-Bluefield, W. Va., Roanoke, Va., Lynchburg, Va., Charlottesville, Va., and Richmond, Va., and the terminal point Norfolk, Va.; and

(3) Between the terminal point Roanoke, Va., the intermediate points Danville, Va., Greensboro-High Point, N. C., Raleigh-Durham, N. C., and Fayetteville, N. C., and the terminal point Wilmington, N. C.,

to be known as Route No. 87.

The service herein authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

(2) Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may regularly serve a point named herein through any airport convenient thereto.

(3) On each trip operated by the holder over all or part of one of the four numbered route segments in this certificate, the holder shall stop at each point named between the point of origin and point of termination of such trip on such segment, except a point or points with respect to which (1) the Board, pursuant to such procedure as the Board may from time to time prescribe, may by order relieve the holder from the requirements of such condition, (2) the holder is authorized by the Board to suspend service, or (3) the holder is unable to render service on such trip because of adverse weather conditions or other conditions which the holder could not reasonably have been expected to foresee or control.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on the 12th day of December, 1947, and shall continue in effect for a period of three years.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on this 12th day of December, 1947.

/s/ J. M. LANDIS
Chairman

(SEAL)
ATTEST:
/s/ M. C. MULLIGAN
Secretary

Appendix P.

Orders
Serial Number E-1060

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

Washington, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C., on
the 18th day of December, 1947.

Docket No. 548 et al.

In the matter of the application of NATIONAL AIRLINES, INC., and other applicants for certificates or amendments to certificates of public convenience and necessity MISSISSIPPI VALLEY CASE.

Docket No. 337 et al.

In the matter of certain deferred portions of the TEXAS-OKLAHOMA CASE.

Docket No. 501 et al.

In the matter of certain deferred portions of THE SOUTHEASTERN STATES CASE.

Docket No. 535 et al.

In the matter of certain deferred portions of GREAT LAKES AREA CASE.

Order.

Full public hearing having been held in each of the above-entitled proceedings, and the Board, upon consideration of the records therein, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That amended certificates of public convenience and necessity, in the forms attached hereto, shall be issued to Transcontinental & Western Air, Inc., for Route No. 2; to Eastern Air Lines, Inc., for Route No. 5; to Delta Air Lines, Inc., for Route No. 24; to Mid-Continent Airlines, Inc., for Route No. 26; and to Chicago and Southern Air Lines, Inc., for Route No. 8, *Provided*, That, in accordance with Order Serial No. E-1025, dated November 28, 1947, said certificate for Route No. 8 shall be and it is hereby temporarily stayed insofar as it authorizes service between Kansas City, Mo., Springfield, Mo., and Memphis, Tenn., such stay to continue until the final decision of the Board on reconsideration in the *Kansas City-Memphis-Florida Case*, Docket No. 1051 et al.;

2. That an amended temporary certificate of public convenience and necessity, in the form attached hereto, shall be issued to Trans-Texas Airway, for Route No. 82;

3. That said certificates shall be signed on behalf of the Board by its Chairman, shall have affixed thereto the seal of the Board attested by the Secretary, and shall be effective on the date of this order;

4. That the temporary certificate of public convenience and necessity to be issued to Parks Air Transport, Inc., pursuant to paragraph 11 of Order Serial No. E-200, dated December 19, 1946 (North Central Case, Docket No. 415 et al.), shall include an authorization for Parks Air Transport, Inc., to engage in air transportation with respect to persons, property, and mail, over the following additional route segments:

(a) Between the co-terminal points St. Louis, Mo., and East St. Louis, Ill., the intermediate points Han-Mo-Quincy, Madison, Iowa, Burlington, Iowa, Muscatine, Iowa, and the terminal point Davenport, Iowa-Moline, Ill.;

(b) Between the co-terminal points St. Louis, Mo., and East St. Louis, Ill., the intermediate points Cape Girardeau, Mo., and Cairo, Ill., and (a) beyond Cairo, Ill., the intermediate points Paducah, Ky., Dyersburg, Tenn., Jackson, Tenn., and the terminal point Memphis, Tenn., and (b) beyond Cairo, Ill., the intermediate points Poplar Bluff, Mo., and Jonesboro, Ark., and the terminal point Memphis, Tenn.;

(c) Between the co-terminal points St. Louis, Mo., and East St. Louis, Ill., the intermediate points Jefferson City, Mo., Springfield, Mo., Joplin, Mo., Miami, Okla., and the terminal point Tulsa, Okla.; and

(d) Between the terminal point Kansas City, Mo., the intermediate points Topeka, Kans., Emporia, Kan., Chanute, Kansas, Coffeyville, Kans., Bartlesville, Okla., and the terminal point Tulsa, Okla.;

5. That paragraph 9 of Order Series No. E-435, dated April 4, 1947, (The Southeastern States Case, Docket No. 501 et al.) shall be amended in its entirety to read as follows:

"9(a.) That a temporary certificate of public convenience and necessity be hereafter issued, after the appropriate showing indicated in the opinion attached hereto as to the adequacy of airport facilities, to Southern Airways, Inc., authorizing it to engage in air transportation with respect to persons, property, and mail for a period of three years from the date of issuance, as follows:

(1) Between the terminal point Memphis, Tenn., the intermediate points Tupelo, Miss., Columbus, Miss., Tuscaloosa, Ala., Birmingham, Ala., Gadsden, Ala., Atlanta, Ga., Athens, Ga., Greenwood, S. C., Greenville, S. C., Spartanburg, S. C., Rock Hill, S. C., and the terminal point Charlotte, N. C.;

(2) Between the terminal point Atlanta, Ga., the intermediate points La Grange, Ga., Columbus, Ga., Albany, Ga., Moultrie, Ga., Valdosta, Ga., and the terminal point Jacksonville, Fla.;

(3) Between the terminal point Columbus, Ga., the intermediate points Macon, Ga., Augusta, Ga., Orangeburg, S. C., and the terminal point Charleston, S. C.;

(4) Between the terminal point Memphis, Tenn., the intermediate points Clarksdale, Miss., Greenville, Miss., Vicksburg, Miss., and the terminal point Jackson, Miss.;

(5) Between the terminal point Memphis, Tenn., the intermediate points Tupelo, Miss., Columbus, Miss., Meridian, Miss., and the terminal point Jackson, Miss.;

(b) Such certificate shall also include an extension of segment (4) from Jackson, Mis., to New Orleans, La., via the intermediate points Natchez, Miss., and Baton Rouge, La., and an extension of segment (4) from Meridian, Miss., to Hattiesburg, Miss., via Laurel, Miss., and (i) beyond Hattiesburg, Miss., the intermediate points Mobile, Ala., and Gulfport-Biloxi, Miss., and the terminal point New Orleans, La., and (ii) beyond Hattiesburg, Miss., the intermediate point Bogalusa, La., and the terminal point New Orleans, La.: *Provided, That* in the event any party in the *Mississippi Valley Case,* Docket No. 548, *et al.,* or in the *Southeastern States Case,* Docket No. 501, *et al.,* deeming itself aggrieved by the extensions authorized in this subparagraph (b), files within 20 days from December 18, 1947, a petition requesting the Board for further hearing, the Board will reopen said proceedings for further hearing on the question whether the public interest will best be served by the selection of

Southern Airways, Inc., to provide service over such extensions. The right to file a petition for further hearing shall be without prejudice to the right of any party to file a petition for rehearing, reargument or reconsideration as provided in section 285.11 of the Board's Economic Regulations.

6. That the application of Mid-Continent Airlines, Inc., Docket No. 1888, be and it is hereby dismissed;

7. That the application of Braniff Airways, Inc., Docket No. 1791, be and it is hereby dismissed;

8. That the portion of the application of Chicago and Southern Air Lines, Inc., Docket No. 1949, proposing three local service routes between St. Louis, Mo., and Memphis, Tenn., and deferred for consideration with the *Mississippi Valley Case*, Docket No. 548 et al., by Order Serial No. E-783, dated September 3, 1947, be and it is hereby denied;

9. That the application of South Central Air Transport, Inc., Docket No. 1531, deferred for consideration with the *Mississippi Valley Case*, Docket No. 548 et al., by Order Serial No. E-136, dated November 14, 1946, be and it is hereby denied;

10. That the application of Southern Bus Lines, Docket No. 1779, deferred for consideration with the *Mississippi Valley Case*, Docket No. 548 et al., by Order Serial No. E-435, dated April 4, 1947, be and it is hereby denied;

11. That those applications in the *Southeastern States Case*, Docket No. 501 et al., proposing local service to cities in Mississippi, Louisiana, Alabama, and Georgia, insofar as they were deferred for consideration with the *Mississippi Valley Case*, Docket No. 548 et al., by Order Serial No. E-435, dated April 4, 1947, except to the extent to which certain route segments are awarded herein to Southern Airways, Inc., be and they are hereby denied;

12. That Order Serial No. 3554, dated March 14, 1945, granting to Chicago and Southern Air Lines, Inc., a temporary exemption from the provisions of section 401(a) of the Civil Aeronautics Act of 1938, as amended, insofar as said provisions would otherwise prevent Chicago and Southern Air Lines, Inc., from engaging in air transportation with respect to persons, property, and mail to and from El Dorado, Ark., as an intermediate point between Pine Bluff, Ark., and Shreveport, La., be and it is hereby rescinded, effective thirty days from the date of issuance of the Board's' decision herein;

13. That the application of Delta Air Lines, Inc., Docket No. 1860, proposing service to Monroe, La., as an intermediate point between Shreveport, La., and New Orleans, La., on Route No. 24, be and it is hereby deferred for consideration when the application of Mid-Continent Airlines, Inc., in Docket No. 1956 is submitted to the Board for decision;

14. That the remaining applications in the *Mississippi Valley Case*, Docket No. 548 et al., except to the extent to which they are herein granted, dismissed, or deferred, be and they are hereby denied.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. MULLIGAN
Secretary

(SEAL)

Appendix Q.

STATEMENT OF CARL J. BROCK.

STATE OF GEORGIA, CITY OF ATLANTA, ss.:

Carl J. Brock being duly sworn states as follows: I wish to make the following statement regarding the conditions I experienced while employed as Superintendent of Maintenance for airline operations of Piedmont Aviation, Inc., between June 27th and August 15, 1947. I was employed by Thomas Davis, President, following my first meeting with him at his request on June 2nd.

During the time that I was with Piedmont it neither had, nor hired (except for one electrician) any mechanics known by me to be experienced on DC-3 airline equipment, although several key men whom I know to be reliable made themselves available to Winston-Salem at Mr. Davis' request to me. So there were no experienced men to fill necessary operating and maintenance jobs including: assistant superintendent and shop foreman, crew chiefs, accessories department head, instrument specialist, prop specialist, hydraulic specialist, engine overhaul foreman, chief inspector and engineer. The only mechanics already there were inexperienced on airline Douglas equipment. Mr. Davis insisted that adequate mechanics could be found in Winston-Salem, such as those whom he employed on fixed base operations who received pay for 48 hours, plus overtime at the same straight nonunion rate.

According to an organization chart showed me, Mr. Ponish had previously been assigned to be director of all maintenance. Mr. Davis, however, contradicted Mr. Ponish on this while I was there, telling Mr. Ponish he would only have authority over the small aircraft of the fixed base operations.

The only usable equipment for airline maintenance in accordance with CAA standards was a tug recently bought, a magnaflux machine, sheet metal shears and roll and a sandblast. The shop was either inadequate or totally de-

ficient in vises, dollies, rivet guns, engine and prop stands and hoists, engine test stand (for 1830's and 1820's), prop tools, engine overhaul tools and machines, dollies, Zyglo, heat treat, spark plug test, ladders and work stands, battery carts, spare parts for planes or engines.

For 1830 or 1820 engines and DC-3 aircraft a small worn out lathe, homemade magneto outfit, small bench grinder, drill and arbor press, center hangar chainfall, small reboring machine and cleaning tank were inadequate. Actually none of the above equipment is special for airline use but standard in shops handling Douglas equipment. The only wing jacks were Twin Cessna type without safeties.

A parts clerk informed me that my request for a standard Whiting engine stand was to be met by construction of a stand by a local contractor.

While I was there the Southern Airways plane being used for training was chocked with sand bags, due to lack of chocks. In fact Mr. Davis said that when service started only two chocks would be available at each station although it is my experience strong gusts require four. During the time I was at Piedmont there was no maintenance equipment installed at any of the proposed stops.

During this period I was given a desk and chair but the only items I was permitted to purchase was an 8' ladder (we had to borrow a larger one for the nose and had none at all for checking tail hinges), two gaskets sent air express to keep Southern Airways plane running, and 6 barrels of Texaco oil. Mr. Davis objected to the purchase of the latter (to meet Southern Airways stipulation) and wanted to mix the oil when the ship was grounded temporarily for lack of same. We were obliged to borrow Eastern's battery cart, none being purchased for this plane's use.

The buildings available included two small hangars used for the small planes including space for engine repairs but unsuitable for large engines of the DC-3 type. Other buildings were an old Army barracks for offices, a dope shop, a small one room radio shack, a small building used for GI students and a wooden Army hangar. This last was just large enough for one DC-3, but with inadequate space for

ladders with a customer's Mallard inside that had to be kept there also. This hangar was poorly lighted, and heated. There was no way of removing ice quickly from planes left outside. The hangar leaked all over and shook when a door was moved.

Shortly before my resignation two DC-3's purchased were flown in by Mr. Davis and Mr. Gilley who had selected and paid for them in New York. Sometime after their arrival Mr. Davis told me he heard someone was critical of them. I told him the person was myself, that it was my opinion they were practically worthless due to skin corrosion and other factors. Mr. Davis denied this and said he has been given cleaner that would restore the finish. Mr. Ponish verified the skin condition.

Later the ships were grounded by the CAA inspector, Mr. Lindemann, about August 11th. Shortly after, when Mr. Davis requested me to run a 100 hour inspection on one of the planes so that it could be immediately used, I told him that the condition of the planes made this impossible. Consequently I submitted my resignation since it was apparent Mr. Davis expected impossible results, both as far as CAA requirements were concerned and operation with totally inadequate personnel and shop facilities.

I understand that recently one of the ships has been passed for licensing without replacing the skin. In this case, the pits and corrosion were the worst I have ever seen on planes to be used in scheduled service, and if approved indicate a lowering of my interpretation of airline maintenance standards.

There were minor irritations while at Piedmont, such as nonfulfillment of Mr. Davis' oral salary promise, being sent in June to New York to inspect planes that had not been there for some time, being requested by Mr. Davis to have an operations manual prepared ready to start service September 1st when Mr. Davis did not even know what equipment he would use and inadequate housing facilities at Winston-Salem (pilots in training are living at tourist

courts and semi-private Y. M. C. A.). However, even though these matters might sooner or later be corrected I was convinced that sooner or later, with results expected and promises as to personnel and facilities not met, it would be a question of resigning or permitting ships to operate contrary to CAA requirements.

Also in this case there was no other official with whom to deal except Mr. Davis. He required that any action or any purchase, even of so small an item as a broom be approved personally by him, and even such purchases might be changed by him to unsuitable or unsafe equipment without agreement or consultation.

In making this statement, I have received no promise or payment of any kind.

My aviation record includes nine years with Eastern Air Lines, leaving as Chief Mechanic in Atlanta, two years with Northwest Airlines as superintendent of service, four years with Delta Air Lines as superintendent of maintenance, two and one-half years with Southern Airways as director of modification while an approved service depot for Douglas Aircraft.

CARL J. BROCK.

Subscribed and sworn to before me this 15th day of October, 1947.

T. H. FITZPATRICK,
Notary Public, Ga. State at Large.

22. Piedmont Petition to Intervene, dated February 10, 1948, and Court Order, dated April 2, 1948, Granting This Intervention.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

STATE AIRLINES, INC., Petitioner *v.* CIVIL AERONAUTICS BOARD, Respondent	No. 9748

MOTION OF PIEDMONT AVIATION, INC., FOR LEAVE TO INTERVENE AND FOR DENIAL OF PETITIONER'S REQUEST FOR A STAY

To the Honorable Judges of the United States Court of Appeals for the District of Columbia:

Piedmont Aviation, Inc., respectfully moves the Court to:

(a) Enter an order permitting Piedmont Aviation, Inc., to intervene in this judicial review proceeding, pursuant to Rule 38(c) of the General Rules of the United States Court of Appeals for the District of Columbia; and

(b) Enter an order denying forthwith the petition for a stay heretofore filed by the appellant, State Airlines, Inc.

In support of this motion Piedmont Aviation, Inc., respectfully alleges that:

1. The petition for review herein was filed on January 19, 1948, by State Airlines, Inc., an unsuccessful applicant

in the proceeding of the United States Civil Aeronautics Board entitled "In the Matter of the Applications of Aero Pickup Service Corporation and Other Applicants for Certificates of Public Convenience and Necessity, known as the Southeastern States Case, under section 401 of the Civil Aeronautics Act of 1938 as amended (Docket No. 501 et al.)"

2. On April 4, 1947, the Civil Aeronautics Board in said Southeastern States Case directed that a temporary certificate of public convenience and necessity be issued, after appropriate preliminary steps, to Piedmont Aviation, Inc., your Movant. By that order the Civil Aeronautics Board authorized Piedmont Aviation, Inc., your Movant, to engage in air transportation with respect to persons, property and mail for a period of three years from the date of the issuance of the certificate. By the same order the Civil Aeronautics Board denied in toto the applications for certificates of public convenience and necessity which had been filed by State Airlines, Inc., the appellant herein.

3. After the issuance of said order of the Civil Aeronautics Board in the Southeastern States Case, on May 8, 1947, State Airlines, Inc., the appellant herein, petitioned the Civil Aeronautics Board for reconsideration of the Board's order insofar as it awarded the route system in question to Piedmont Aviation, Inc., your Movant, rather than to State Airlines. Without waiting for the Board to act upon this petition, State Airlines filed a petition for review with this Court on July 16, 1947. At that time your Movant was granted leave to intervene. Pursuant to a motion of the Civil Aeronautics Board and a supporting memorandum filed by your Movant at that time, the Court dismissed that petition for review on September 3, 1947, for the reason that it was prematurely filed (Docket of this Court No. 9604).

4. After jurisdiction over this proceeding was thus properly returned to the Civil Aeronautics Board, the Board reopened the Southeastern States Case and heard further argu-

ment as to whether: (a) the Board had legal power to award the route system to Piedmont Aviation, Inc., your Movant; and (b) whether the *public interest* required the selection of Piedmont Aviation, Inc., your Movant, rather than State Airlines. After thus hearing further argument, the Board, in a Supplemental Opinion adopted on December 12, 1947, properly determined that it did have full legal authority to award the route system to Piedmont Aviation, Inc., and further, *that the public interest compelled the selection of Piedmont Aviation, Inc.*, rather than State Airlines.

5. At that time, December 12, 1947, the Board issued to Piedmont Aviation, Inc., a temporary certificate of public convenience and necessity authorizing this carrier to engage in air transportation with respect to persons, property and mail as follows:

(1) Between the alternate terminal points Cincinnati, Ohio, and Louisville, Ky., the intermediate points Lexington, Ky., London-Corbin, Ky., Middlesboro-Harlan, Ky., and Bristol, Va., and (a) beyond Bristol, Va., the intermediate points Asheville, N. C., Charlotte, N. C., Southern Pines-Pinehurst-Aberdeen, N. C., and Fayetteville, N. C., and the terminal point Wilmington, N. C., and (b) beyond Bristol, Va., the intermediate points Winston-Salem, N. C., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Goldsboro, N. C., and New Bern, N. C., and, from May 1 to October 31, inclusive, of each year, the terminal point Morehead City, N. C.;

(2) Between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky., Huntington, W. Va., Charleston, W. Va., Beckley, W. Va., Princeton-Bluefield, W. Va., Roanoke, Va., Lynchburg, Va., Charlottesville, Va., and Richmond, Va., and the terminal point Norfolk, Va.; and

(3) Between the terminal point Roanoke, Va., the intermediate points Danville, Va., Greensboro-High Point,

N. C., Raleigh-Durham, N. C., and Fayetteville, N. C., and the terminal point Wilmington, N. C.

6. Pursuant to the said orders of the Civil Aeronautics Board, adopted on April 4 and on December 12, 1947, Piedmont Aviation, Inc., has spent large sums of money in preparation for the inauguration of certificated air transportation service. In fact, this carrier has expeditiously, yet painstakingly, completed its development program so that it will inaugurate service over the route system awarded it within a week from date hereof, to-wit, on February 14, 1948. As of December 31, 1947, Piedmont has expended in excess of $300,000 in preparation for the inauguration of its service and in reliance upon the validity of the aforesaid orders of the Civil Aeronautics Board. More detailed information as to the investment, personnel and procedures involved in Piedmont's preparation for service is set forth in the attached memorandum, which memorandum is hereby made a part hereof. By reason of its substantial investment and substantial organization, which have been developed to inaugurate air service in conformity with the orders of the Civil Aeronautics Board, Piedmont Aviation, Inc., has a very substantial financial interest in this appeal.

7. The petition filed herein by State Airlines directly affects and is drastically destructive of the interests of Piedmont Aviation, Inc. That petition requests that State Airlines be substituted for your Movant as the successful applicant for said certificate of public convenience and necessity. Under the circumstances it is right and proper that Movant be permitted to intervene in this proceeding for the purpose of participating in all respects before this Court in correction with the aforesaid petition for review, in support of the financial and other vital interests of Movant, Piedmont Aviation, Inc.

8. Furthermore, State Airlines, Inc., the appellant herein, filed with the Civil Aeronautics Board on July 21, 1947

and again on January 19, 1948, petitions for a stay of the effectiveness of the Board's orders and for a stay of the certificate issued to Piedmont Aviation, Inc., your Movant. After thorough consideration of these petitions for a stay in the light of the public interest, the Civil Aeronautics Board denied both of them. The Board's most recent denial was on January 28, 1948 (Order Serial No. E-1166).

9. The United States Post Office Department has now designated each of the routes to be served by Piedmont Aviation, Inc., for the transportation of mail. Hence the service of Piedmont Aviation, Inc., is required in the interest of the postal service, the commerce of the United States, and the national defense, as evidenced by basic findings of both the Civil Aeronautics Board and the Post Office Department.

10. On January 29, 1948, State Airlines, Inc., filed with this Court a further petition for a stay of the effectiveness of the Board's orders and for a stay of the certificate issued to Piedmont Aviation, Inc., your Movant. On February 4, 1948, the Civil Aeronautics Board (the respondent herein) filed detailed objections to this request for a stay. The Board pointed out that a stay would be contrary to the public interest and wholly unwarranted under the circumstances. Piedmont Aviation, Inc., your Movant, also vigorously opposes this petition for a stay.

If the Court were to issue a stay order at this time, Piedmont Aviation, Inc., would be irreparably injured. Piedmont's very extensive investment and its substantial organization, which are now devoted to preparing for the inauguration of air service within a week, would be drastically impaired and irrevocably ruined. The public interest would also be seriously prejudiced because sorely needed air service would be denied to the public for a further undetermined period of time. The hearing in this Southeastern States Case was started before the Civil Aeronautics Board nearly three years ago, in May 1945. Surely, further delay is violently opposed to the public interest. A memorandum, which sets

forth in more detail the facts requiring refusal of a stay, is attached hereto and made a part hereof.

On the other hand, State Airlines will not be injured in any way by the Court's refusal to grant a stay. Its alleged rights can be heard in orderly fashion, and justice can be granted according to the facts and law of this case without in the meantime jeopardizing the public interest and without tragically and unjustifiably penalizing Piedmont Aviation.

Under these circumstances it is fitting and proper that this Court deny forthwith the present petition of State Airlines for a stay.

WHEREFORE, Piedmont Aviation, Inc. prays that this Court:

(a) Enter an order permitting Piedmont Aviation, Inc. to intervene in this proceeding; and

(b) Enter an order denying forthwith the petition for a stay heretofore filed by State Airlines.

Piedmont Aviation, Inc., further respectfully moves this Court that an order be issued granting it time upon oral argument.

Respectfully submitted,

/s/ Robert B. Hankins
Robert B. Hankins

Stockton, Ulmer & Murchison
Attorneys for Movant
Piedmont Aviation, Inc.

1016 Ring Building
18th & M Streets, N. W.
Washington 6, D. C.

Charles H. Murchison
Robert B. Hankins
Joseph K. Gilligan
Of Counsel

February 10, 1948

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

No. 9748. January Term, 1948.

State Airlines, Inc.,
Petitioner,

v.

Civil Aeronautics Board,
Respondent.

Before: Stephens, C.J., Edgerton and Clark, JJ.

ORDER

On consideration of the motion of Piedmont Aviation, Inc., for leave to intervene in the above entitled case, in which motion it objects to petitioner's motion for stay herein, which motion for stay was denied by this Court on February 13, 1948, It is

ORDERED by the Court that Piedmont Aviation, Inc., be, and it is hereby, allowed to intervene in the above entitled case.

Per Curiam.

Dated April 2, 1948.

23. General Stipulations:

The allegations of procedural steps contained in the third paragraph of the Petition of State Airlines, Inc., for a review of Orders of the Civil Aeronautics Board, filed in the United States Court of Appeals on January 19, 1948, are substantially correct.

24. Portions of the Record which duplicate the preceding or relate to the cases of other applicants and parties.

(1) Examiners Report—Volume 22 of Record.

R 11592

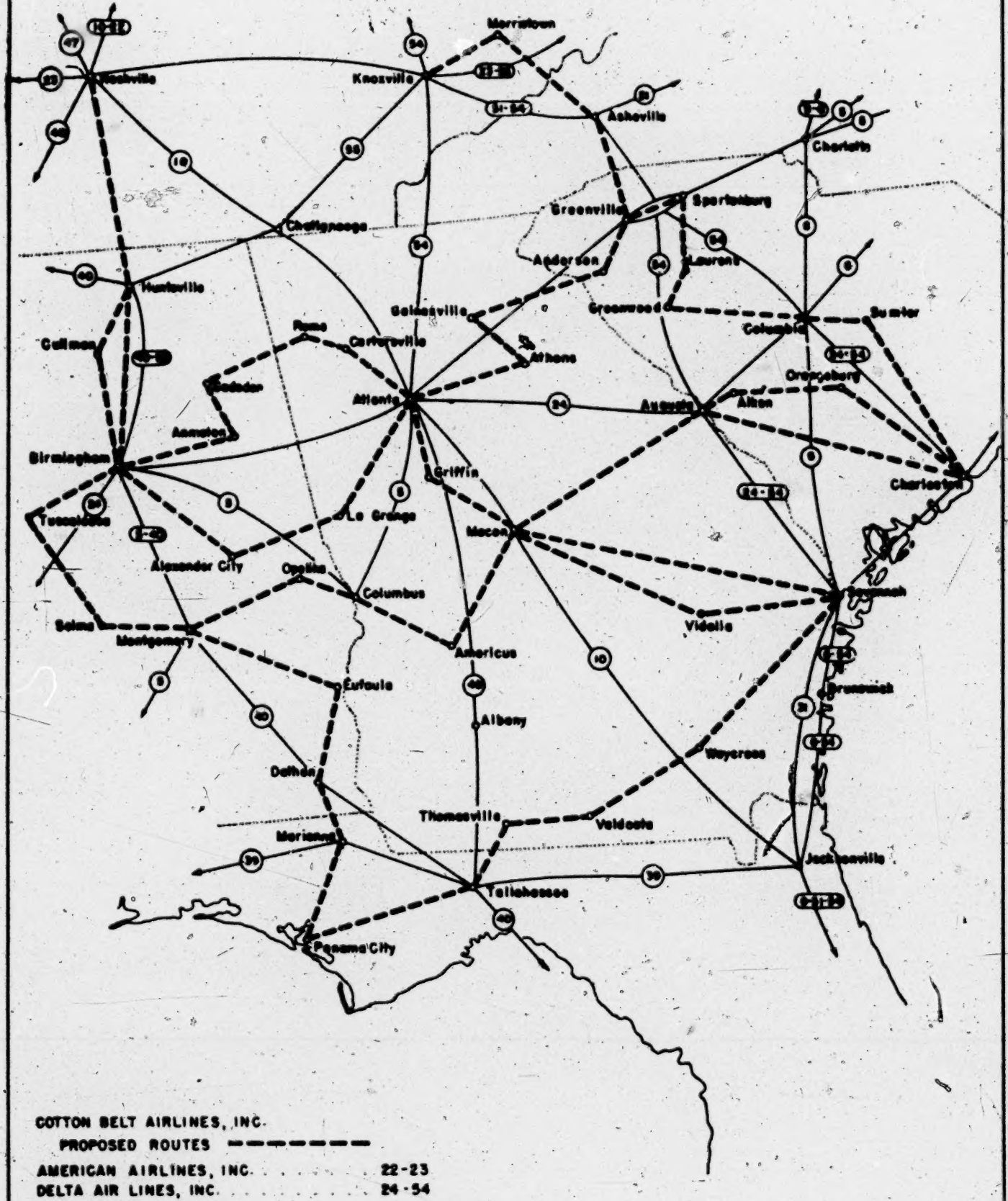
6A

DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

COTTON BELT AIRLINES, INC.



COTTON BELT AIRLINES, INC.
PROPOSED ROUTES ---------

AMERICAN AIRLINES, INC.	22-23
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-6-10-40-47
NATIONAL AIRLINES, INC.	31-39
PENNSYLVANIA-CENTRAL AIRLINES CORP.	51-55

CIVIL AERONAUTICS BOARD

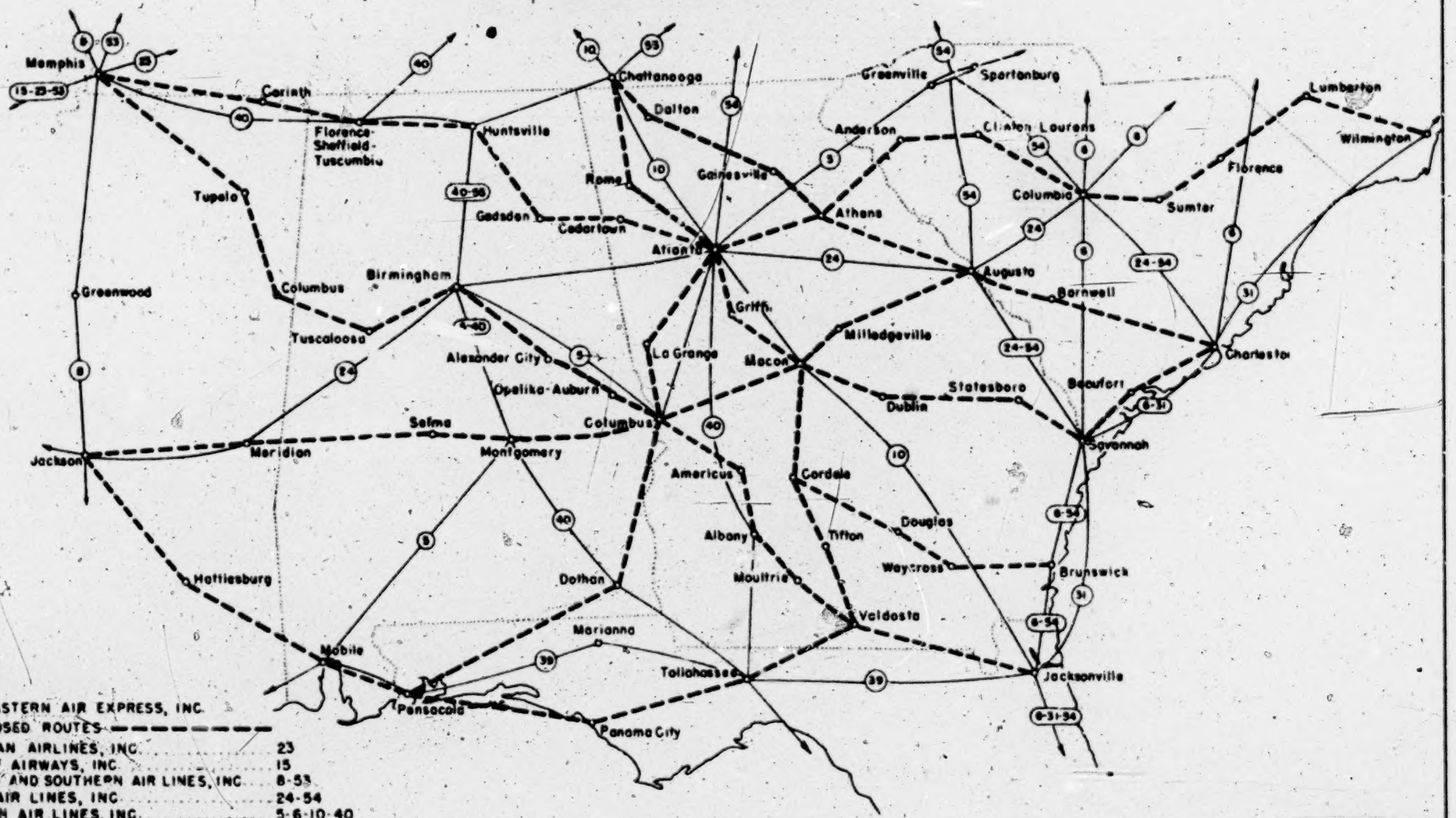
8A

DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

SOUTHEASTERN AIR EXPRESS, INC.



SOUTHEASTERN AIR EXPRESS, INC.
PROPOSED ROUTES

AMERICAN AIRLINES, INC.	23
BRANIFF AIRWAYS, INC.	15
CHICAGO AND SOUTHERN AIR LINES, INC.	8-53
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-6-10-40
NATIONAL AIRLINES, INC.	31-39
PENNSYLVANIA-CENTRAL AIRLINES CORP.	55

CIVIL AERONAUTICS BOARD

659

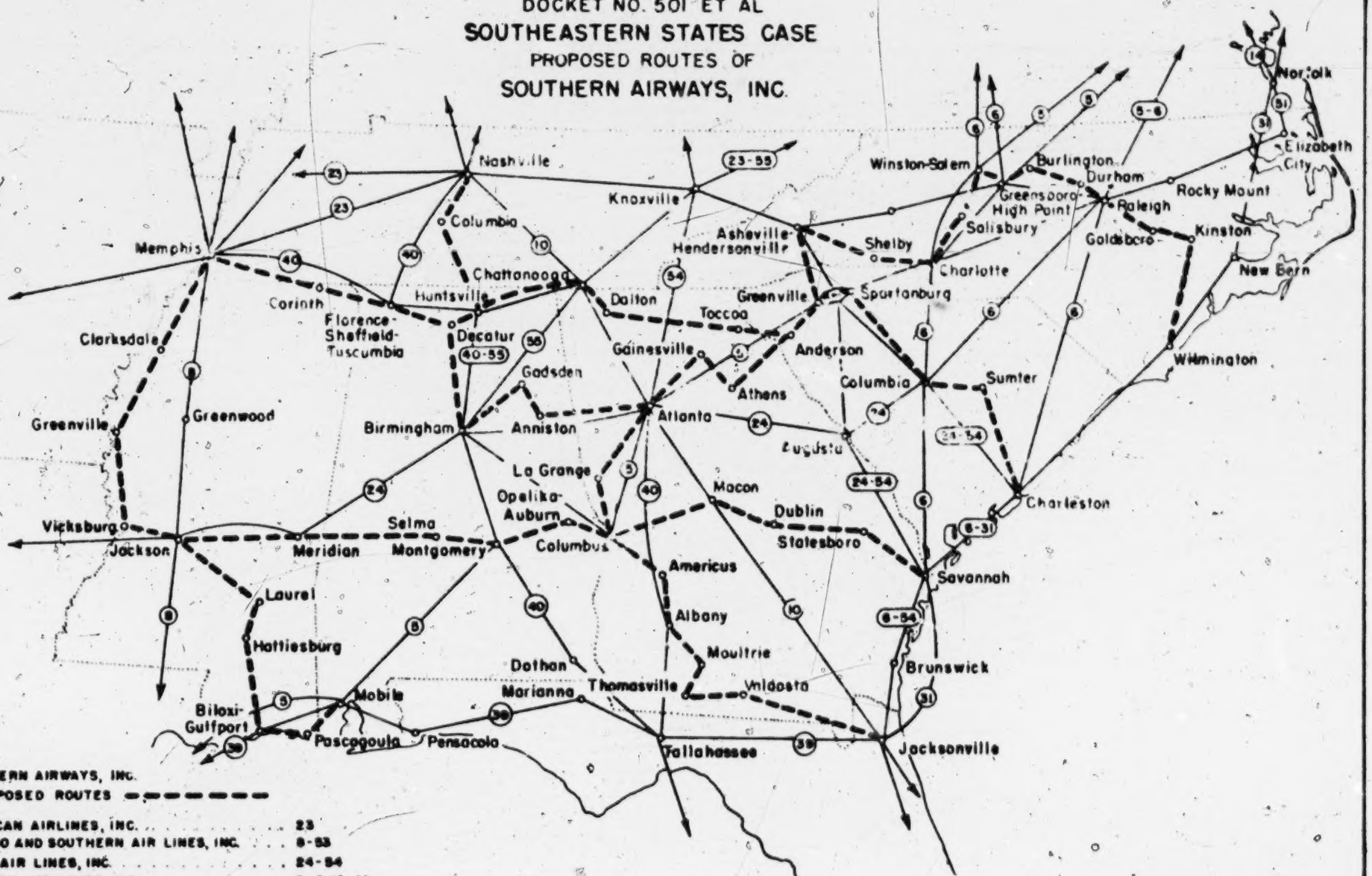
12 A

DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

SOUTHERN AIRWAYS, INC.



SOUTHERN AIRWAYS, INC.
PROPOSED ROUTES

AMERICAN AIRLINES, INC.	23
CHICAGO AND SOUTHERN AIR LINES, INC.	8-53
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-6-10-40
NATIONAL AIRLINES, INC.	31-39
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-51-55

CIVIL AERONAUTICS BOARD

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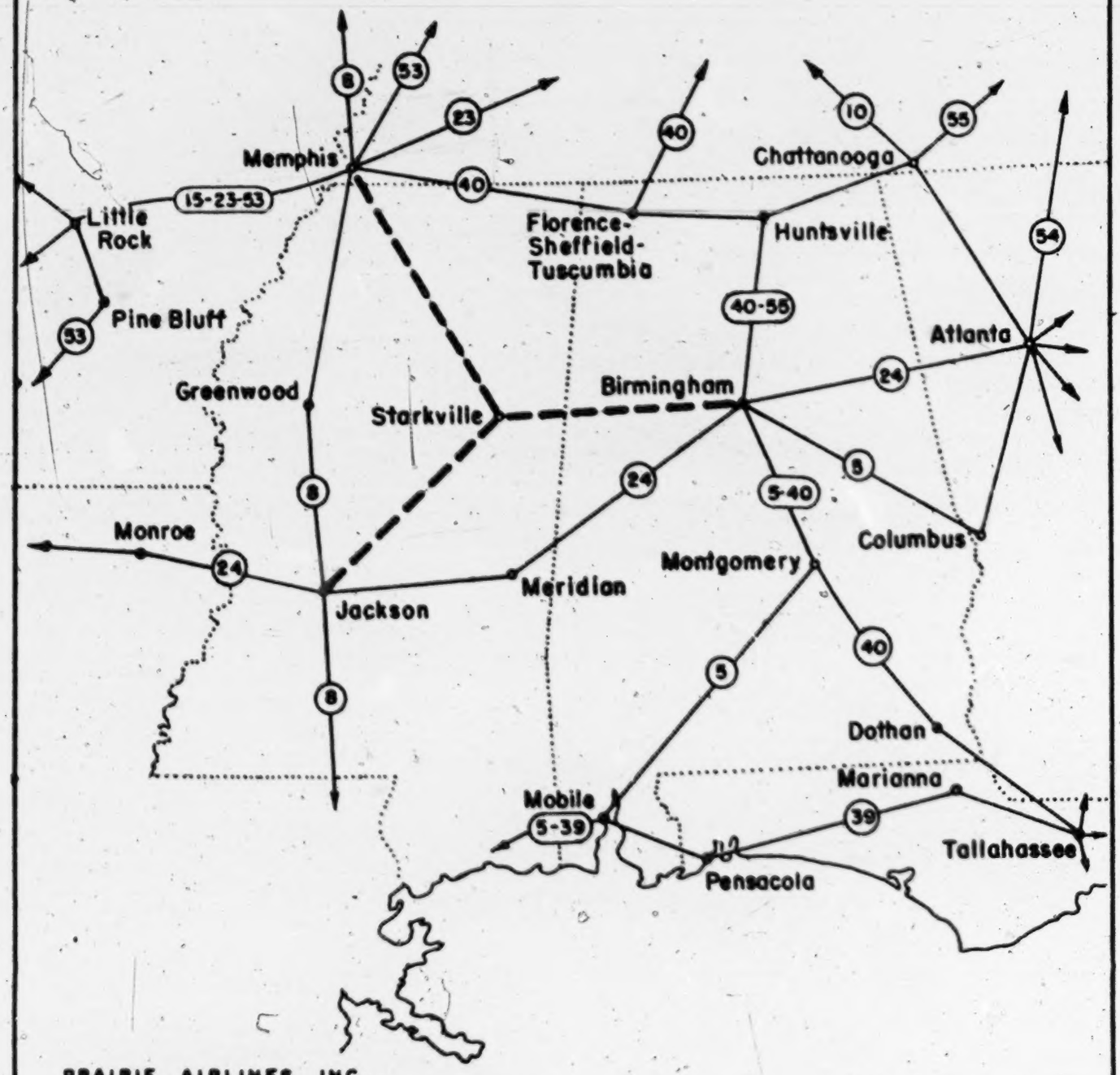
DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

PRAIRIE AIRLINES, INC.



PRAIRIE AIRLINES, INC.

PROPOSED ROUTES — — — — —

AMERICAN AIRLINES, INC.	23
BRANIFF AIRWAYS, INC.	15
CHICAGO AND SOUTHERN AIR LINES, INC.	8-53
DELTA AIR LINES INC.	24-54
EASTERN AIR LINES, INC.	5-10-40
NATIONAL AIRLINES, INC.	39
PENNSYLVANIA-CENTRAL AIRLINES CORP.	55

CIVIL AERONAUTICS BOARD

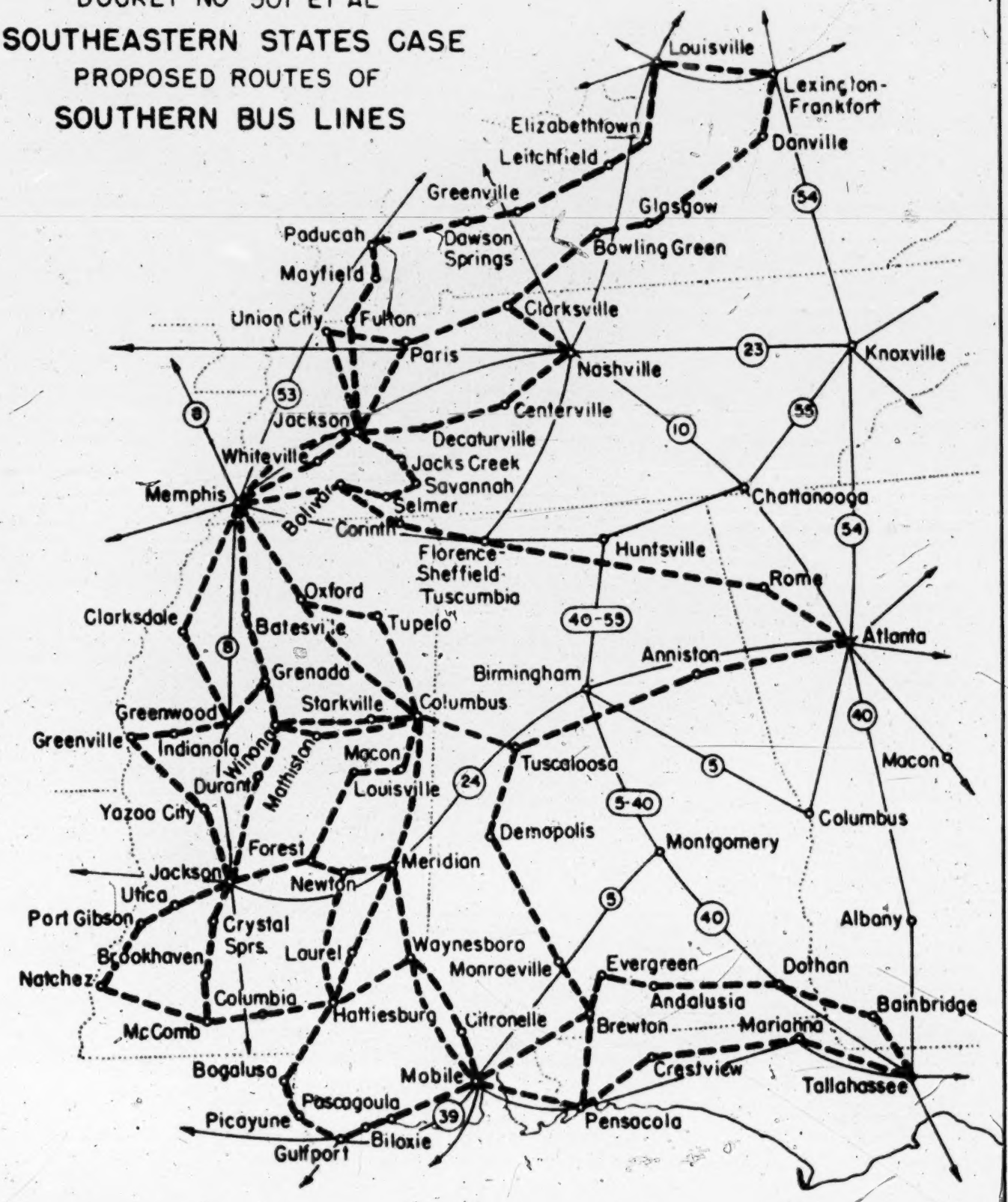
47A

DOCKET NO 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

SOUTHERN BUS LINES



SOUTHERN BUS LINES

PROPOSED ROUTES ----------

AMERICAN AIRLINES, INC.	23
CHICAGO AND SOUTHERN AIR LINES, INC.	8-53
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-10-40
NATIONAL AIRLINES, INC.	39
PENNSYLVANIA-CENTRAL AIRLINES CORP.	55

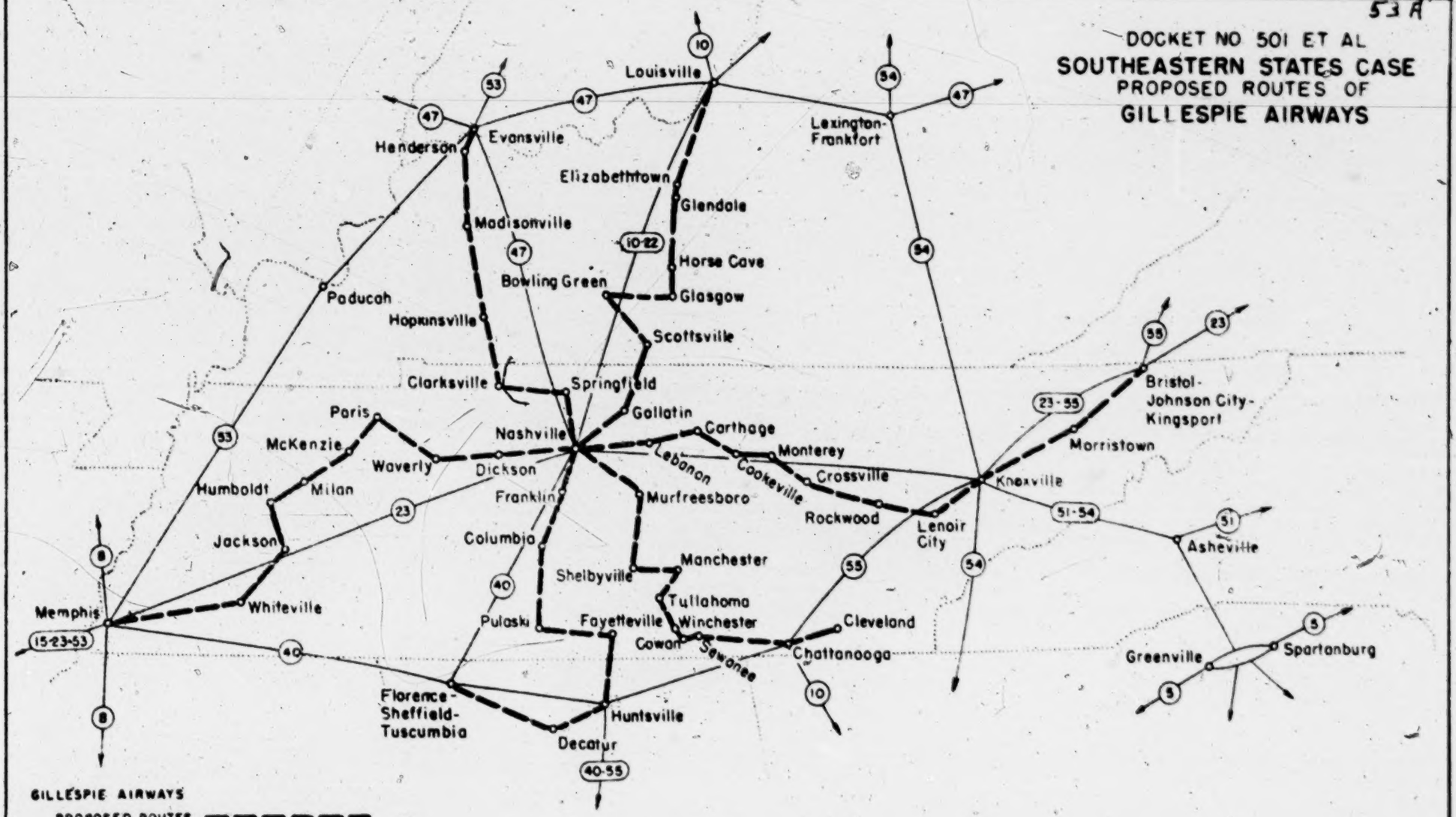
CIVIL AERONAUTICS BOARD

53 A

DOCKET NO 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF GILLESPIE AIRWAYS



GILLESPIE AIRWAYS

PROPOSED ROUTES

AMERICAN AIRLINES, INC.	22-23
BRANIFF AIRLINES, INC.	15
CHICAGO AND SOUTHERN AIR LINES, INC.	8-53
DELTA AIR LINES, INC.	54
EASTERN AIR LINES INC.	5-10-40-47
PENNSYLVANIA-CENTRAL AIRLINES CORP.	51-55

CIVIL AERONAUTICS BOARD

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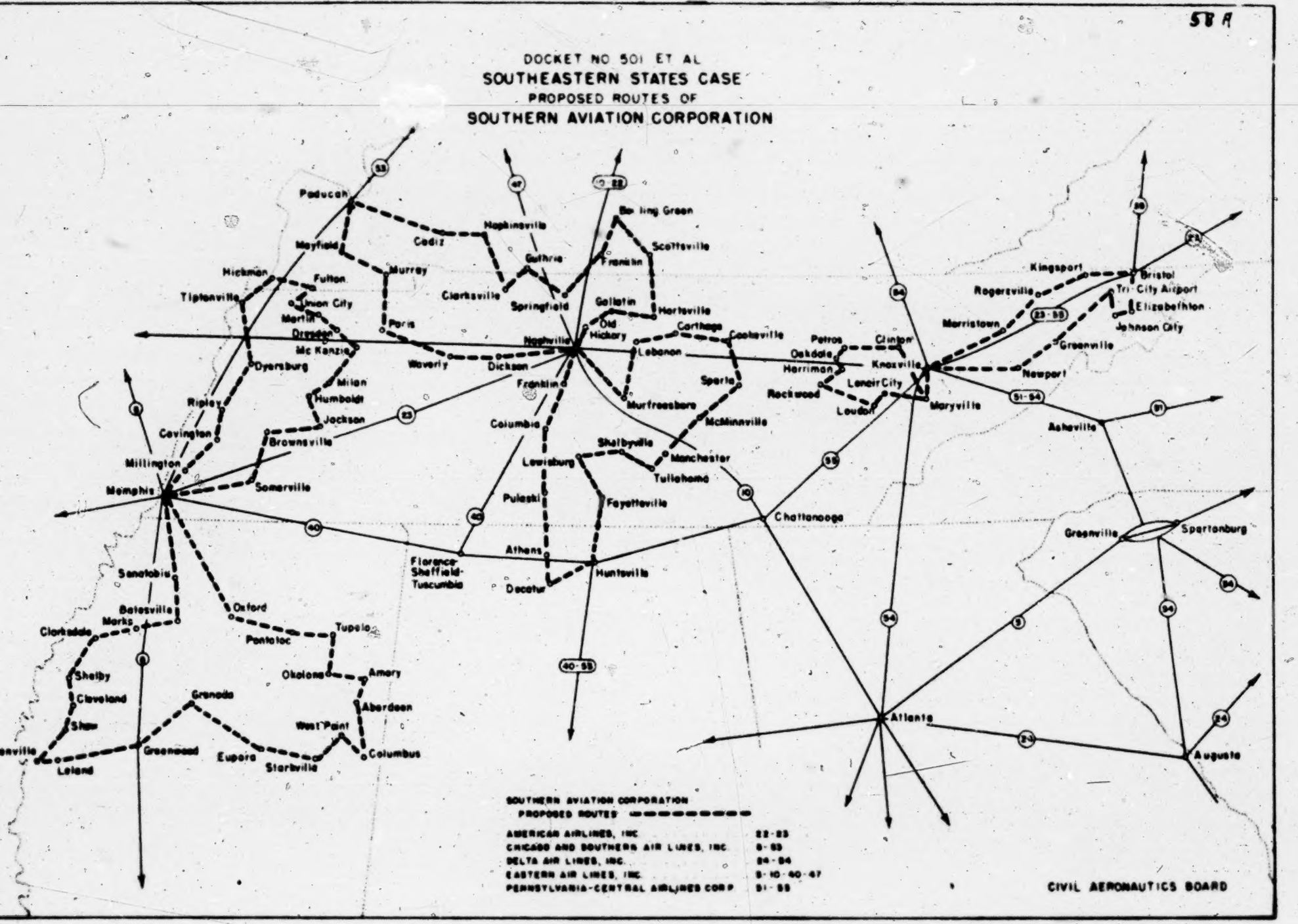
DOCKET NO 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

SOUTHERN AVIATION CORPORATION



SOUTHERN AVIATION CORPORATION
PROPOSED ROUTES

AMERICAN AIRLINES, INC.	22-23
CHICAGO AND SOUTHERN AIR LINES, INC.	8-53
DELTA AIR LINES, INC.	84-84
EASTERN AIR LINES, INC.	8-10-60-67
PENNSYLVANIA-CENTRAL AIRLINES CORP.	51-55

CIVIL AERONAUTICS BOARD

644

11-25-5

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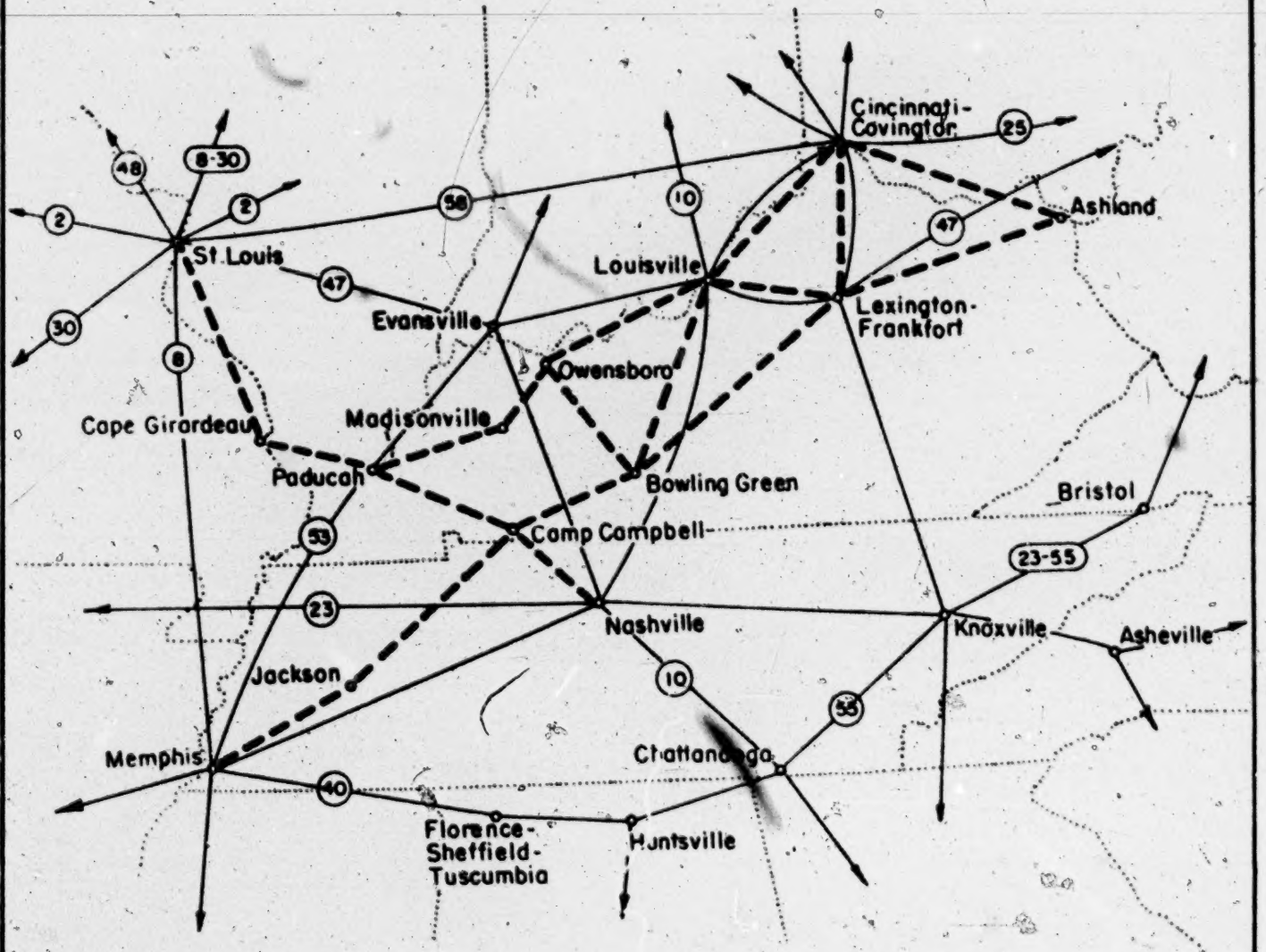
DOCKET NO. 501 ET AL
SOUTHEASTERN STATES CASE
PROPOSED ROUTES OF
BLUE GRASS AIRLINES



BLUE GRASS AIRLINES

PROPOSED ROUTES — — — — — — —

AMERICAN AIRLINES INC.	23-25-30
CHICAGO AND SOUTHERN AIR LINES, INC.	8-53
EASTERN AIR LINES, INC.	10-40-47
MID-CONTINENT AIRLINES, INC.	48
PENNSYLVANIA-CENTRAL AIRLINES CORP.	55
TRANSCONTINENTAL & WESTERN AIR, INC.	2-58

CIVIL AERONAUTICS BOARD

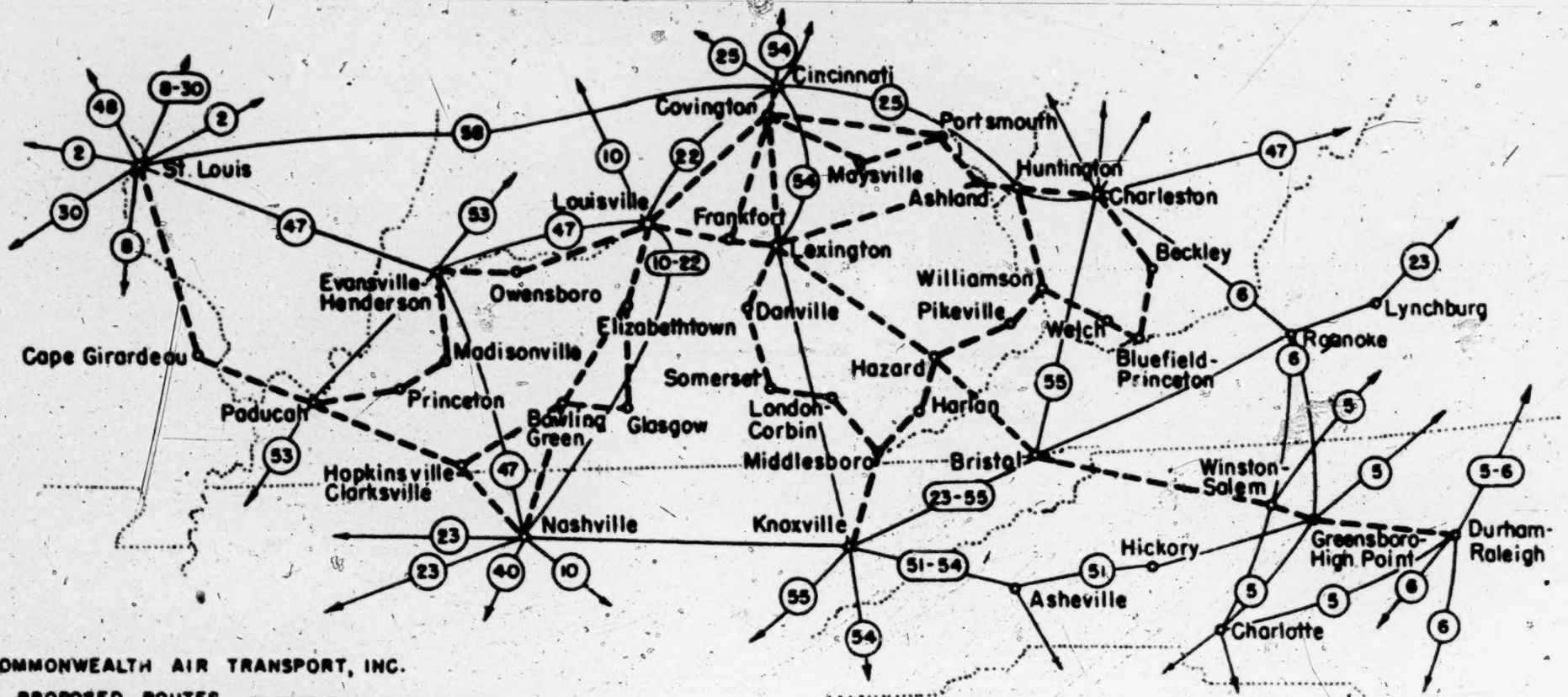
66A

DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

COMMONWEALTH AIR TRANSPORT, INC.



COMMONWEALTH AIR TRANSPORT, INC.

PROPOSED ROUTES ----------

AMERICAN AIRLINES, INC.	22-23-25-30
CHICAGO AND SOUTHERN AIRLINES, INC.	8-53
DELTA AIR LINES, INC.	54
EASTERN AIR LINES, INC.	5-6-10-40-47
MID-CONTINENT AIRLINES, INC.	48
PENNSYLVANIA-CENTRAL AIRLINES CORP.	51-55
TRANSCONTINENTAL & WESTERN AIR, INC.	2-58

CIVIL AERONAUTICS BOARD

646

11660

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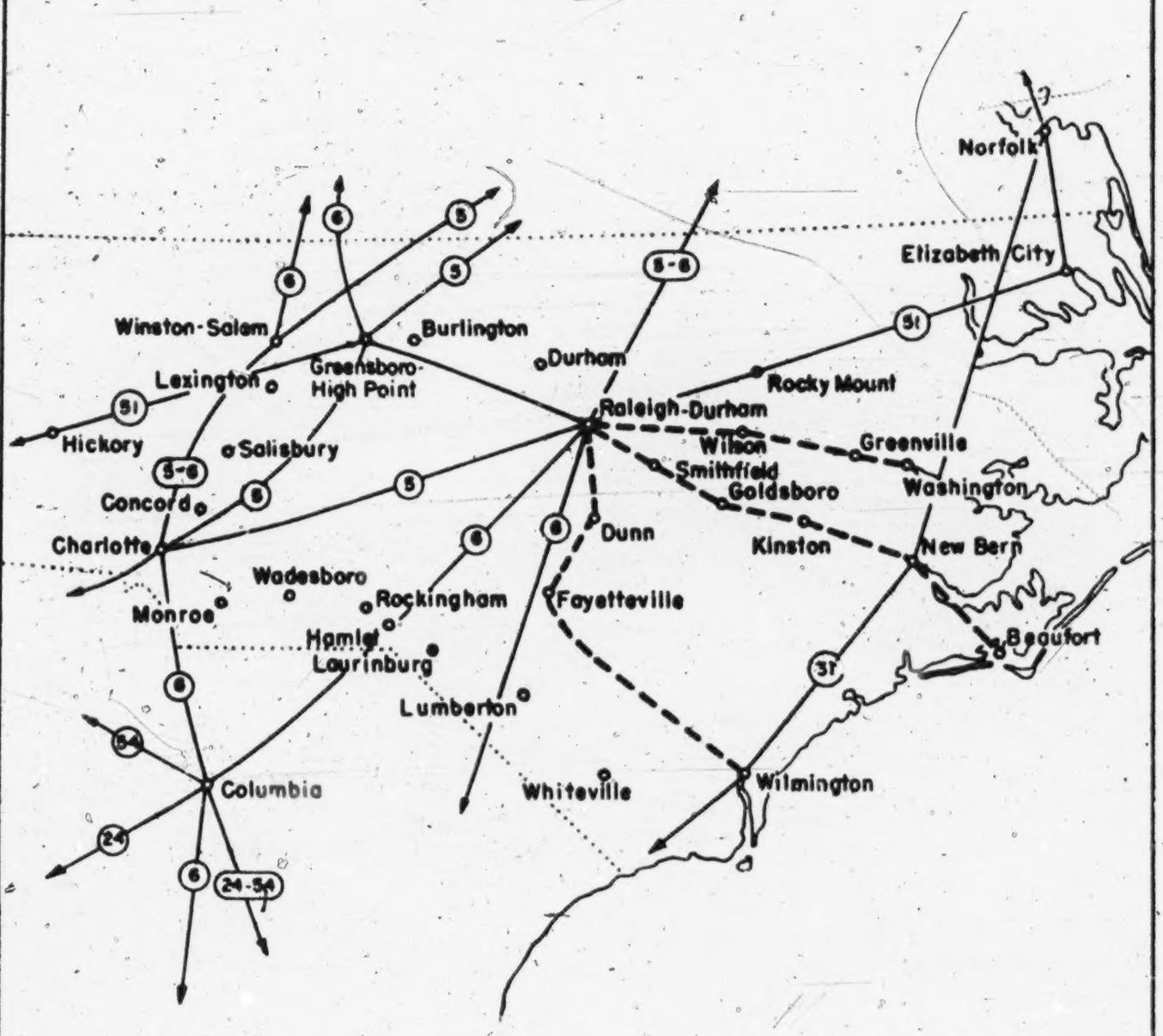
DOCKET NO 501 ET AL
SOUTHEASTERN STATES CASE
PROPOSED ROUTES OF
ATLANTIC AND CAROLINA AIRWAYS CO.



ATLANTIC AND CAROLINA AIRWAYS CO.

PROPOSED ROUTES ————————

DELTA AIR LINES, INC. 24-54

EASTERN AIR LINES, INC. 5-6

NATIONAL AIRLINES, INC. 31

PENNSYLVANIA-CENTRAL AIRLINES CORP. . 51

CIVIL AERONAUTICS BOARD

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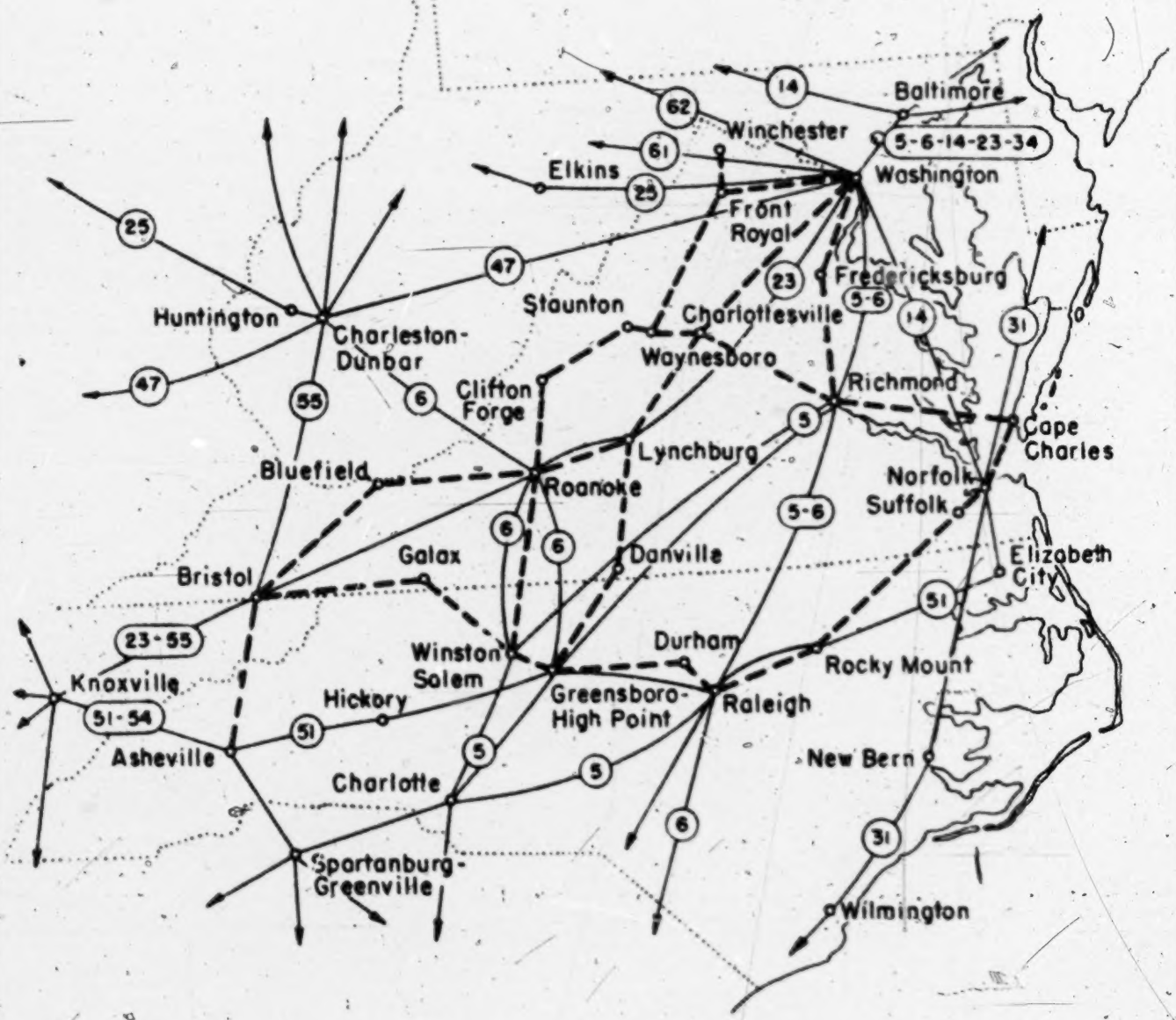
DOCKET NO. 501 ET AL
SOUTHEASTERN STATES CASE
PROPOSED ROUTES OF
VIRGINIA AIRWAYS



VIRGINIA AIRWAYS
PROPOSED ROUTES ----------

AMERICAN AIRLINES, INC.	23-25
DELTA AIR LINES, INC.	54
EASTERN AIR LINES, INC.	5-6-47
NATIONAL AIRLINES, INC.	31
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-34-51-55
TRANSCONTINENTAL & WESTERN AIR, INC.	61
UNITED AIR LINES, INC.	62

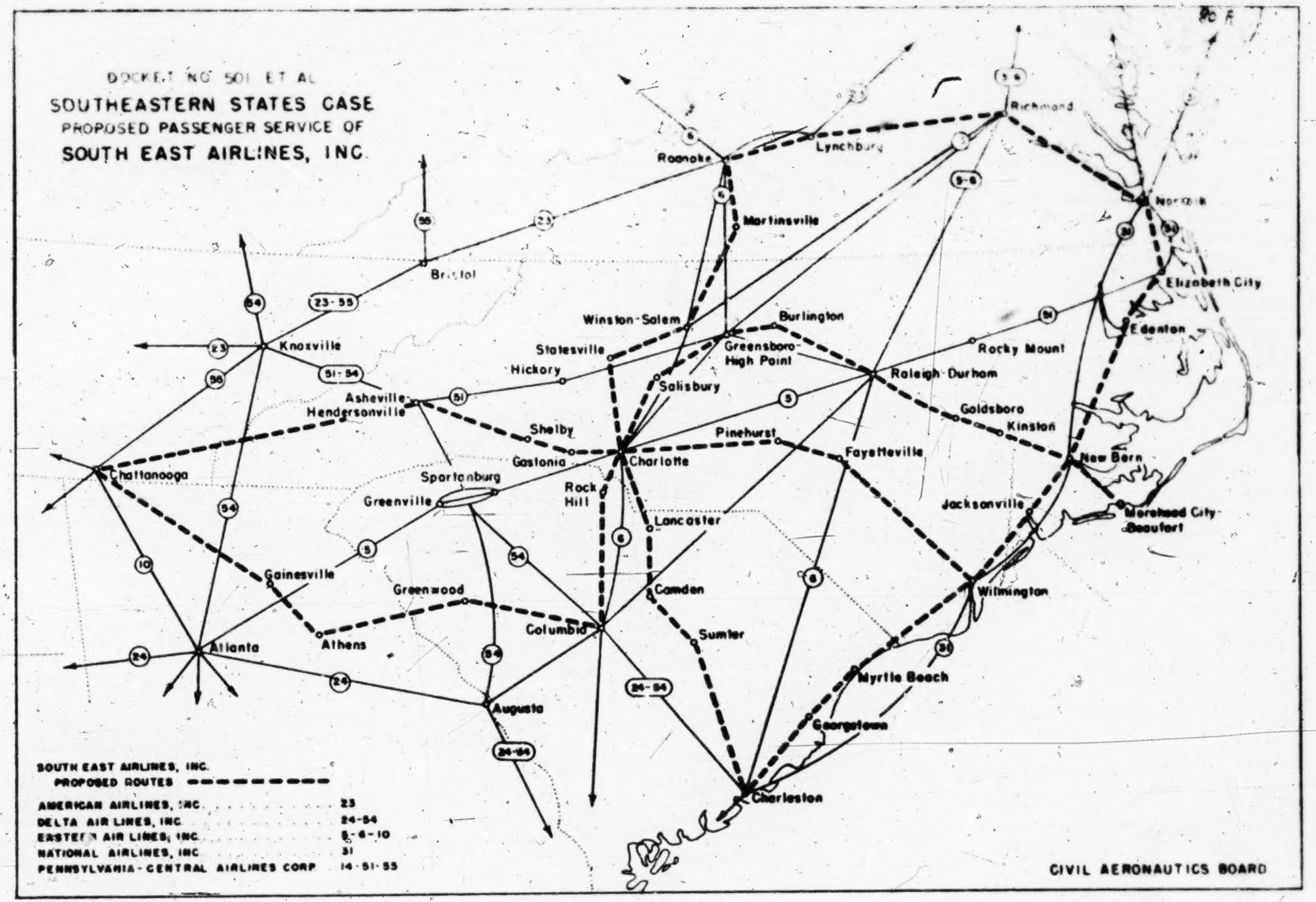
CIVIL AERONAUTICS BOARD

DOCKET NO 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED PASSENGER SERVICE OF

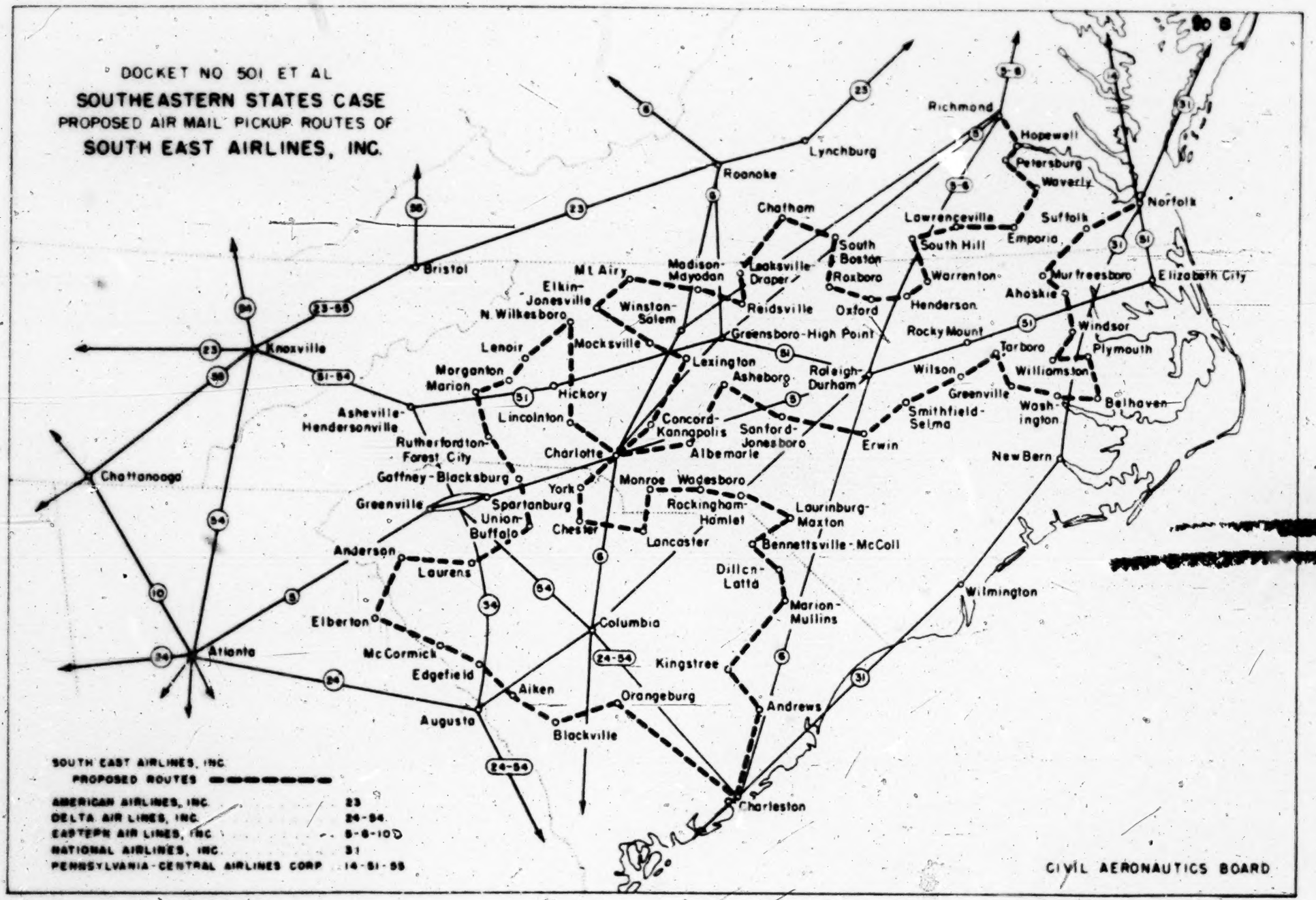
SOUTH EAST AIRLINES, INC.



SOUTH EAST AIRLINES, INC.
PROPOSED ROUTES

AMERICAN AIRLINES, INC.	23
DELTA AIR LINES, INC.	24-84
EASTERN AIR LINES, INC.	5-6-10
NATIONAL AIRLINES, INC.	31
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-51-55

CIVIL AERONAUTICS BOARD


DOCKET NO 501 ET AL
SOUTHEASTERN STATES CASE
PROPOSED AIR MAIL PICKUP ROUTES OF
SOUTH EAST AIRLINES, INC.
Richmond
Hopewell
Petersburg
Waverly
Norfolk
Lynchburg
Roanoke
Chatham
Lawrenceville
Suffolk
South Hill
Emporia
Bristol
Mt Airy
Madison-Mayodan
Leaksville-Draper
South Boston
Roxboro
Warrenton
Murfreesboro
Elizabeth City
Elkin-Jonesville
Winston-Salem
Reidsville
Oxford
Henderson
Ahoskie
N. Wilkesboro
Greensboro-High Point
Rocky Mount
Windsor
Knoxville
Lenoir
Mocksville
Tarboro
Plymouth
Lexington
Asheboro
Raleigh-Durham
Wilson
Williamston
Morganton
Marion
Hickory
Greenville
Asheville-Hendersonville
Lincolnton
Smithfield-Selma
Washington
Belhaven
Concord-Kannapolis
Sanford-Jonesboro
Rutherfordton-Forest City
Charlotte
Albemarle
Erwin
New Bern
Chattanooga
Gaffney-Blacksburg
York
Monroe
Wadesboro
Greenville
Spartanburg
Rockingham-Hamlet
Laurinburg-Maxton
Union-Buffalo
Chester
Lancaster
Bennettsville-McColl
Anderson
Laurens
Dillon-Latta
Wilmington
Elberton
Columbia
Marion-Mullins
Atlanta
McCormick
Kingstree
Edgefield
Aiken
Orangeburg
Andrews
Augusta
Blackville
Charleston
SOUTH EAST AIRLINES, INC.
PROPOSED ROUTES
AMERICAN AIRLINES, INC. 23
DELTA AIR LINES, INC. 24-54
EASTERN AIR LINES, INC. 5-6-10D
NATIONAL AIRLINES, INC. 31
PENNSYLVANIA-CENTRAL AIRLINES CORP. 14-51-55
CIVIL AERONAUTICS BOARD

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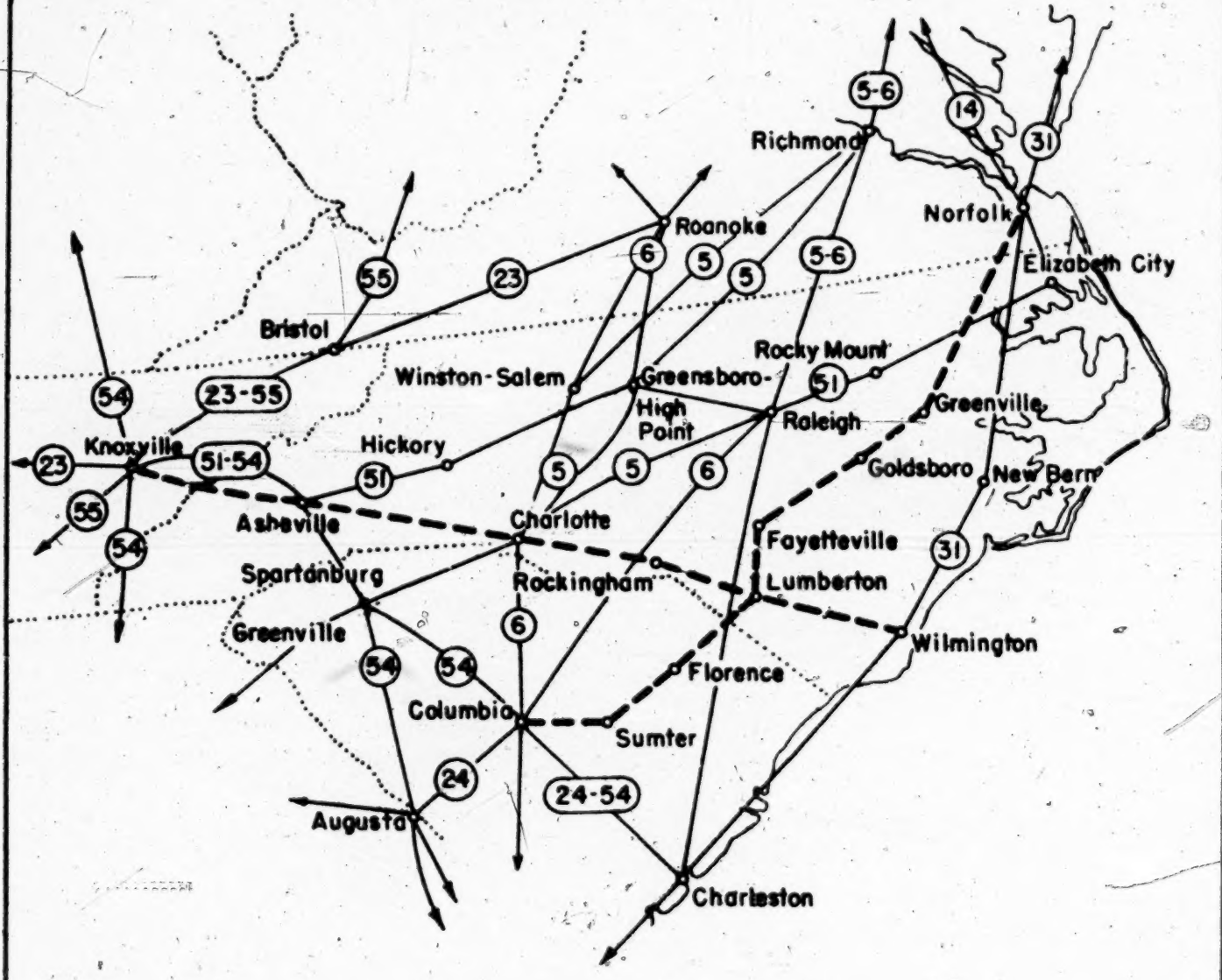
DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

SEABOARD AIR TRANSPORT



SEABOARD AIR TRANSPORT
PROPOSED ROUTES - - - - - -

AMERICAN AIRLINES, INC.	23
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-6
NATIONAL AIRLINES, INC.	31
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-51-55

CIVIL AERONAUTICS BOARD

(p. 652)

11684

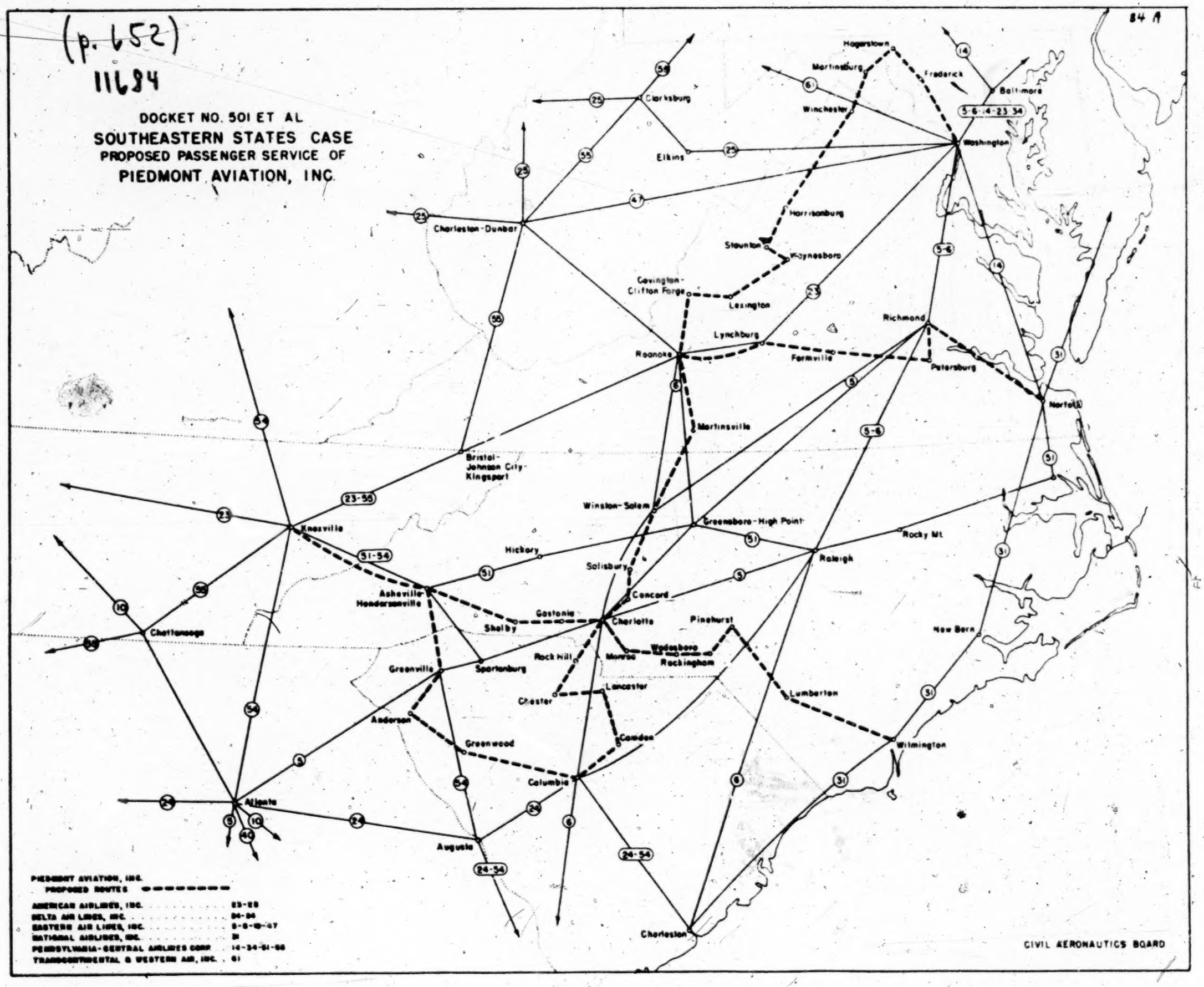
84 A

DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED PASSENGER SERVICE OF

PIEDMONT AVIATION, INC.



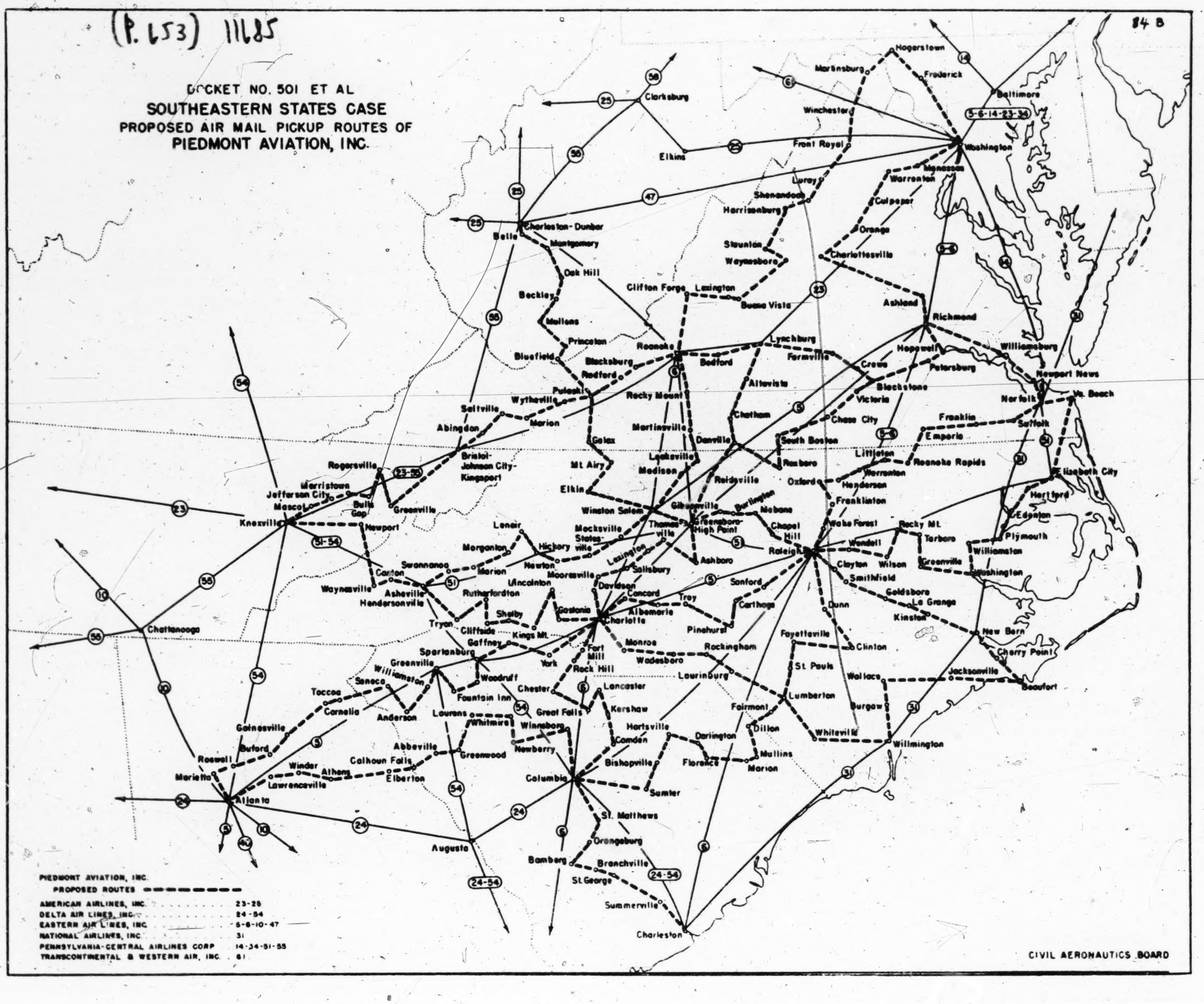
(P. 653) 11685

84 B

DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED AIR MAIL PICKUP ROUTES OF PIEDMONT AVIATION, INC.



PIEDMONT AVIATION, INC.
PROPOSED ROUTES

AMERICAN AIRLINES, INC.	23-25
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-6-10-47
NATIONAL AIRLINES, INC.	31
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-34-51-55
TRANSCONTINENTAL & WESTERN AIR, INC.	81

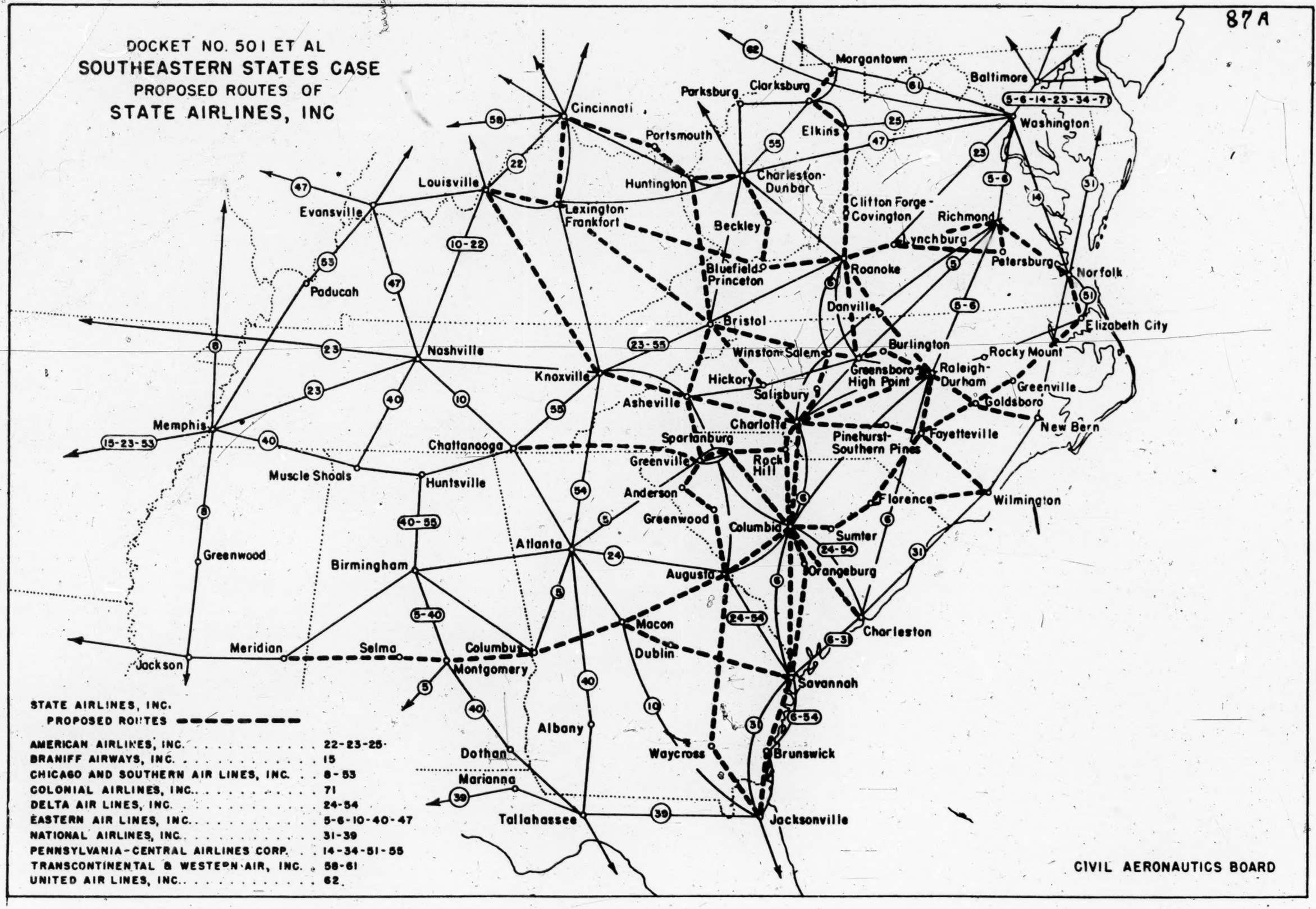
87A

DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

STATE AIRLINES, INC



STATE AIRLINES, INC.
PROPOSED ROUTES

AMERICAN AIRLINES, INC.	22-23-25
BRANIFF AIRWAYS, INC.	15
CHICAGO AND SOUTHERN AIR LINES, INC.	8-53
COLONIAL AIRLINES, INC.	71
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-6-10-40-47
NATIONAL AIRLINES, INC.	31-39
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-34-51-55
TRANSCONTINENTAL & WESTERN AIR, INC.	58-61
UNITED AIR LINES, INC.	62

CIVIL AERONAUTICS BOARD

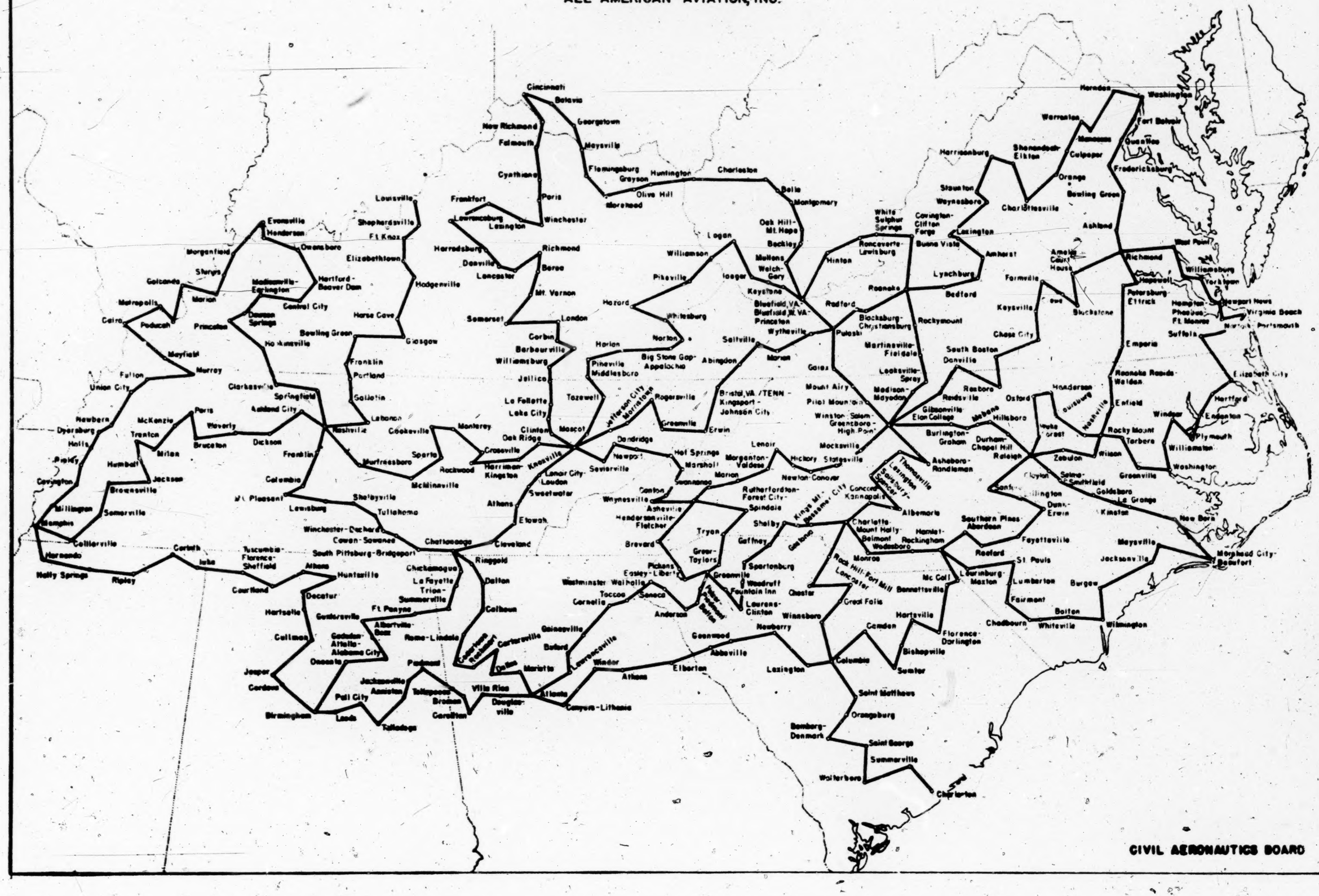
E-651

11689

11698 (p. 655)

95A

DOCKET NO. 501 ET AL
SOUTHEASTERN STATES CASE
PROPOSED ROUTES OF
ALL AMERICAN AVIATION, INC.


Cincinnati
Batavia
Georgetown
New Richmond
Falmouth
Maysville
Flemingsburg
Grayson
Huntington
Charleston
Cynthiana
Paris
Olive Hill
Morehead
Louisville
Frankfort
Lawrenceburg
Lexington
Winchester
Shepherdsville
Ft. Knox
Harrodsburg
Danville
Richmond
Elizabethtown
Lancaster
Berea
Evansville
Henderson
Owensboro
Hodgenville
Mt. Vernon
Somerset
London
Morganfield
Sturgis
Madisonville-
Earlington
Hartford-
Beaver Dam
Horse Cave
Corbin
Barbourville
Glasgow
Bowling Green
Franklin
Portland
Williamsburg
Jellico
Tazewell
Logan
Williamson
Oak Hill-
Mt. Hope
Beckley
Mullens
Welch-
Gary
Pikeville
Keystone
Hazard
Whitesburg
Norton
Pineville
Middlesboro
Big Stone Gap-
Appalachia
Saltville
Abingdon
Marion
Bristol, VA./TENN.-
Kingsport-
Johnson City
Greeneville
Erwin
Rogersville
Jefferson City
Morristown
Dandridge
Newport
Sevierville
Mascot
Oak Ridge
Clinton
Crossville
Knoxville
Lenoir City
Loudon
Sweetwater
Athens
Etowah
Cleveland
Chattanooga
Harrison-
Kingston
Rockwood
Monterey
Cookeville
Sparta
Murfreesboro
McMinnville
Nashville
Lebanon
Gallatin
Springfield
Ashland City
Clarksville
Dickson
Franklin
Columbia
Mt. Pleasant
Lewisburg
Shelbyville
Tullahoma
Winchester-Decherd
Cowan-Sewanee
South Pittsburg-Bridgeport
Tuscumbia-
Florence-
Sheffield
Athens
Huntsville
Courtland
Decatur
Hartselle
Cullman
Guntersville
Gadsden-
Attalla-
Alabama City
Oneonta
Albertville-
Boaz
Rome-Lindale
Jasper
Cordova
Birmingham
Jacksonville
Anniston
Pell City
Leeds
Talladega
Talladega
Piedmont
Tallapoosa
Villa Rica
Carrollton
Douglas-
ville
Dalton
Calhoun
Cartersville
Marietta
Atlanta
Canyon-Lithonia
Gainesville
Buford
Lawrenceville
Winder
Athens
Elberton
Abbeville
Greenwood
Newberry
Lexington
Columbia
Saint Matthews
Orangeburg
Bamberg-
Denmark
Saint George
Summerville
Walterboro
Charleston
Sumter
Bishopville
Florence-
Darlington
Camden
Hartsville
Chadbourn
Whiteville
Wilmington
Bolton
Fairmont
Lumberton
Laurinburg-
Maxton
Mc Coll
Bennettsville
Rock Hill-Fort Mill
Lancaster
Great Falls
Chester
Winnsboro
Laurens-
Clinton
Greenville
Woodruff
Fountain Inn
Spartanburg
Pickens
Easley-Liberty
Westminster
Walhalla
Toccoa
Cornelia
Seneca
Anderson
Greer-
Taylors
Gaffney
Shelby
Brevard
Tryon
Hendersonville-
Fletcher
Asheville
Waynesville
Canton
Ruthertordton-
Forest City-
Spindale
Kings Mt.-
Belmont-
Mt. Holly
Charlotte-
Mount Holly-
Belmont
Wadesboro
Albemarle
Concord-
Kannapolis
Statesville
Hickory
Newton-Conover
Morganton-
Valdese
Lenoir
Mocksville
Marion
Spencer
Thomasville
Lexington
Salisbury
Asheboro-
Randleman
Rockingham
Hamlet-
Southern Pines
Aberdeen
Monroe
Reidsville
Reidsville
Gibsonville
Elon College
Burlington-
Graham
Durham-
Chapel Hill
Raleigh
Hillsboro
Mebane
Oxford
Henderson
Roxboro
Duke
Forest
Zebulon
Wilson
Rocky Mount
Tarboro
Greenville
Goldsboro
La Grange
Kinston
New Bern
Morehead City-
Beaufort
Jacksonville
Maysville
Clayton
Selma-
Smithfield
Dunn-
Erwin
Fayetteville
Reeford
St. Pauls
Roanoke Rapids-
Weldon
Enfield
Windsor
Williamston
Plymouth
Hertford
Edenton
Elizabeth City
Suffolk
Portsmouth
Virginia Beach
Newport News
Hampton-
Phoebus-
Ft. Monroe
Williamsburg
Yorktown
West Point
Hopewell
Petersburg
Ettrick
Emporia
South Boston
Danville
Martinsville-
Fieldale
Leaksville-
Spray
Madison-
Mayodan
Eden
Winston-Salem-
Greensboro-
High Point
Mount Airy
Pilot Mountain
Galax
Roanoke
Blacksburg-
Christiansburg
Pulaski
Radford
Bluefield, VA.-
Bluefield W. VA.-
Princeton
Wytheville
Rocky Mount
Bedford
Lynchburg
Amherst
Amelia
Court
House
Farmville
Keysville
Chase City
Blackstone
Ashland
Richmond
Orange
Culpeper
Manassas
Warrenton
Fort Belvoir
Washington
Alexandria
Fredericksburg
Bowling Green
Harrisonburg
Shenandoah-
Elkton
Staunton
Waynesboro
Charlottesville
Lexington
Buena Vista
Covington-
Clifton
Forge
White
Sulphur
Springs
Ronceverte-
Lewisburg
Hinton
Logan
Williamson
Pikeville
Welch-
Gary
Mullens
Beckley
Oak Hill-
Mt. Hope
Huntington
Charleston
Belle
Montgomery
Point
Pleasant
Parkersburg
Marietta
Cambridge
Zanesville
Newark
Columbus
Springfield
Dayton
Cincinnati
Batavia
Georgetown
Maysville
Flemingsburg
Grayson
Morehead
Olive Hill
Ashland
Huntington
Charleston
Belle
Montgomery
Oak Hill-
Mt. Hope
Beckley
Mullens
Welch-
Gary
Logan
Williamson
Pikeville
Hazard
Whitesburg
Norton
Pineville
Middlesboro
Big Stone Gap-
Appalachia
Saltville
Abingdon
Marion
Bristol, VA./TENN.-
Kingsport-
Johnson City
Greeneville
Erwin
Rogersville
Jefferson City
Morristown
Dandridge
Newport
Sevierville
Mascot
Oak Ridge
Clinton
Crossville
Knoxville
Lenoir City
Loudon
Sweetwater
Athens
Etowah
Cleveland
Chattanooga
Harrison-
Kingston
Rockwood
Monterey
Cookeville
Sparta
Murfreesboro
McMinnville
Nashville
Lebanon
Gallatin
Springfield
Ashland City
Clarksville
Dickson
Franklin
Columbia
Mt. Pleasant
Lewisburg
Shelbyville
Tullahoma
Winchester-Decherd
Cowan-Sewanee
South Pittsburg-Bridgeport
Tuscumbia-
Florence-
Sheffield
Athens
Huntsville
Courtland
Decatur
Hartselle
Cullman
Guntersville
Gadsden-
Attalla-
Alabama City
Oneonta
Albertville-
Boaz
Rome-Lindale
Jasper
Cordova
Birmingham
Jacksonville
Anniston
Pell City
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Villa Rica
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Douglas-
ville
Dalton
Calhoun
Cartersville
Marietta
Atlanta
Canyon-Lithonia
Gainesville
Buford
Lawrenceville
Winder
Athens
Elberton
Abbeville
Greenwood
Newberry
Lexington
Columbia
Saint Matthews
Orangeburg
Bamberg-
Denmark
Saint George
Summerville
Walterboro
Charleston
Sumter
Bishopville
Florence-
Darlington
Camden
Hartsville
Chadbourn
Whiteville
Wilmington
Bolton
Fairmont
Lumberton
Laurinburg-
Maxton
Mc Coll
Bennettsville
Rock Hill-Fort Mill
Lancaster
Great Falls
Chester
Winnsboro
Laurens-
Clinton
Greenville
Woodruff
Fountain Inn
Spartanburg
Pickens
Easley-Liberty
Westminster
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Cornelia
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Thomasville
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Asheboro-
Randleman
Rockingham
Hamlet-
Southern Pines
Aberdeen
Monroe
Reidsville
Reidsville
Gibsonville
Elon College
Burlington-
Graham
Durham-
Chapel Hill
Raleigh
Hillsboro
Mebane
Oxford
Henderson
Roxboro
Duke
Forest
Zebulon
Wilson
Rocky Mount
Tarboro
Greenville
Goldsboro
La Grange
Kinston
New Bern
Morehead City-
Beaufort
Jacksonville
Maysville
Clayton
Selma-
Smithfield
Dunn-
Erwin
Fayetteville
Reeford
St. Pauls
Roanoke Rapids-
Weldon
Enfield
Windsor
Williamston
Plymouth
Hertford
Edenton
Elizabeth City
Suffolk
Portsmouth
Virginia Beach
Newport News
Hampton-
Phoebus-
Ft. Monroe
Williamsburg
Yorktown
West Point
Hopewell
Petersburg
Ettrick
Emporia
South Boston
Danville
Martinsville-
Fieldale
Leaksville-
Spray
Madison-
Mayodan
Eden
Winston-Salem-
Greensboro-
High Point
Mount Airy
Pilot Mountain
Galax
Roanoke
Blacksburg-
Christiansburg
Pulaski
Radford
Bluefield, VA.-
Bluefield W. VA.-
Princeton
Wytheville
Rocky Mount
Bedford
Lynchburg
Amherst
Amelia
Court
House
Farmville
Keysville
Chase City
Blackstone
Ashland
Richmond
Orange
Culpeper
Manassas
Warrenton
Fort Belvoir
Washington
Alexandria
Fredericksburg
Bowling Green
Harrisonburg
Shenandoah-
Elkton
Staunton
Waynesboro
Charlottesville
Lexington
Buena Vista
Covington-
Clifton
Forge
White
Sulphur
Springs
Ronceverte-
Lewisburg
Hinton

11706

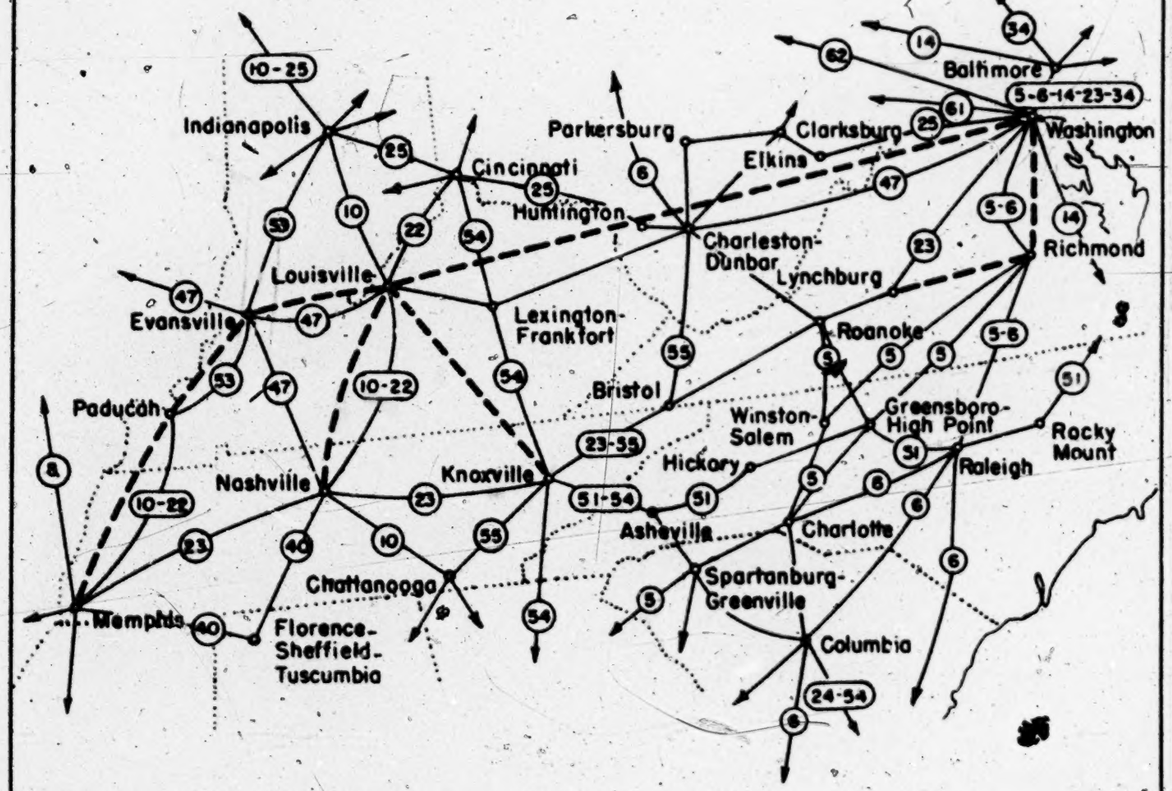
102 A

DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

AMERICAN AIRLINES, INC.



AMERICAN AIRLINES, INC.

EXISTING ROUTES — 22 — 23 — 25 —

PROPOSED ROUTES - - - - - - -

CHICAGO AND SOUTHERN AIR LINES INC.	8-53
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-6-10-40-47
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-34-51-55
TRANSCONTINENTAL & WESTERN AIR, INC.	61
UNITED AIR LINES, INC.	62

CIVIL AERONAUTICS BOARD

11712

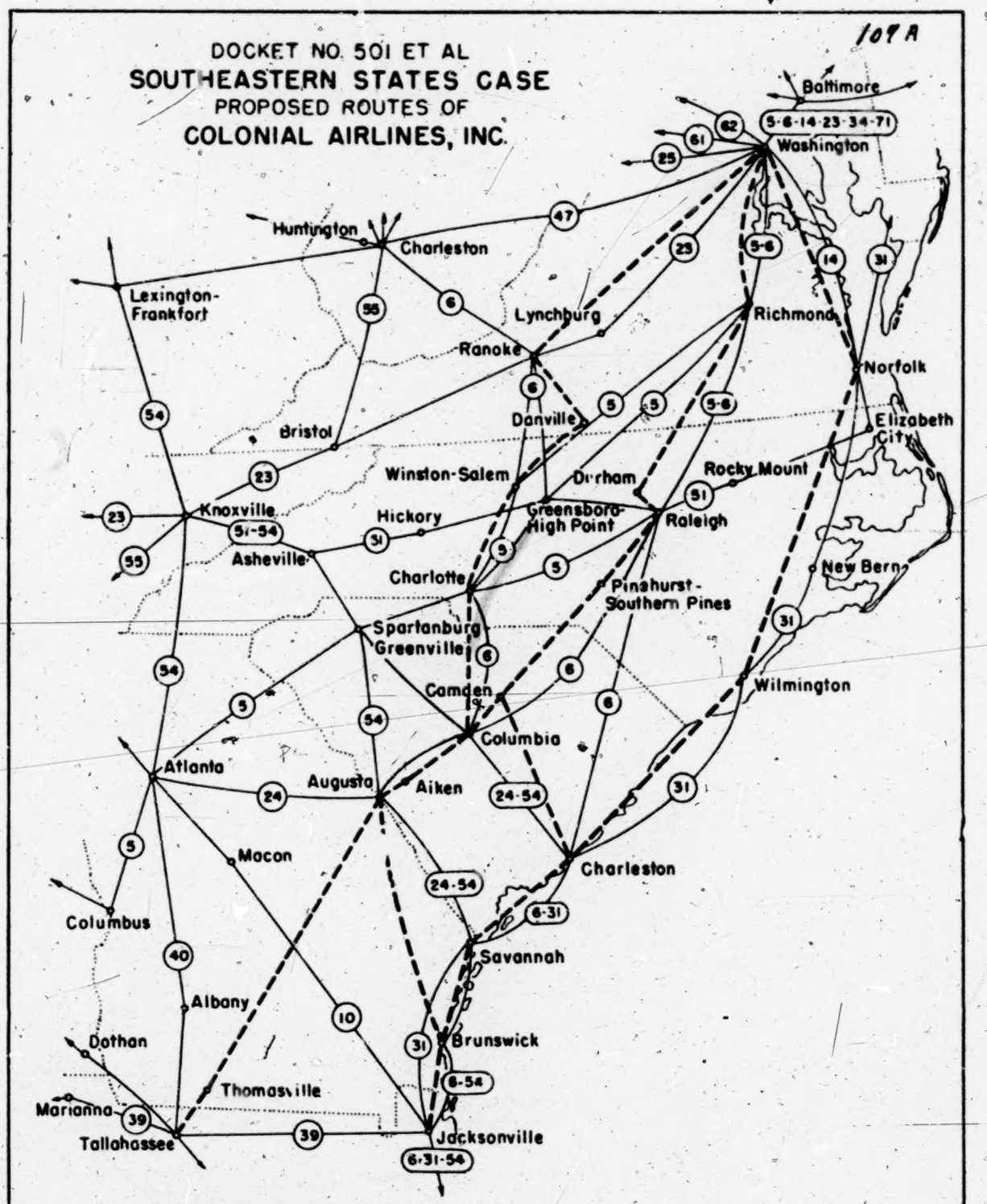
109 A

DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

COLONIAL AIRLINES, INC.



COLONIAL AIRLINES, INC.

EXISTING ROUTES — 71 —

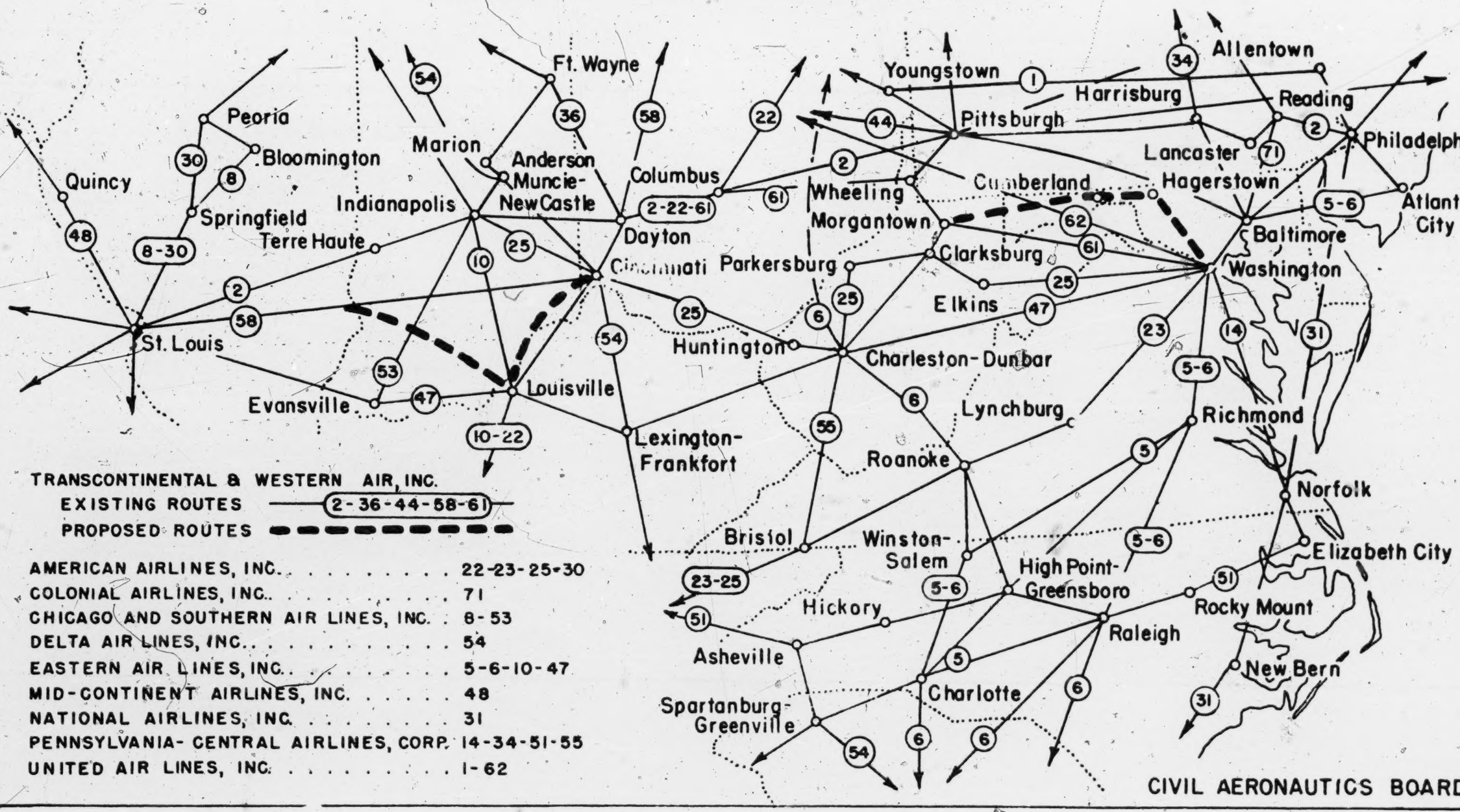
PROPOSED ROUTES - - - - - - -

AMERICAN AIRLINES, INC.	23-25
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-6-10-40-47
NATIONAL AIRLINES, INC.	31-39
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-34-51-55
TRANSCONTINENTAL & WESTERN AIR, INC.	61
UNITED AIR LINES, INC.	62

CIVIL AERONAUTICS BOARD

109 A

DOCKET NO. 501 ET AL
SOUTHEASTERN STATES CASE
PROPOSALS OF
TRANSCONTINENTAL & WESTERN AIR, INC.



TRANSCONTINENTAL & WESTERN AIR, INC.
EXISTING ROUTES — 2-36-44-58-61
PROPOSED ROUTES - - - - - -

AMERICAN AIRLINES, INC.	22-23-25-30
COLONIAL AIRLINES, INC.	71
CHICAGO AND SOUTHERN AIR LINES, INC.	8-53
DELTA AIR LINES, INC.	54
EASTERN AIR LINES, INC.	5-6-10-47
MID-CONTINENT AIRLINES, INC.	48
NATIONAL AIRLINES, INC.	31
PENNSYLVANIA-CENTRAL AIRLINES, CORP.	14-34-51-55
UNITED AIR LINES, INC.	1-62

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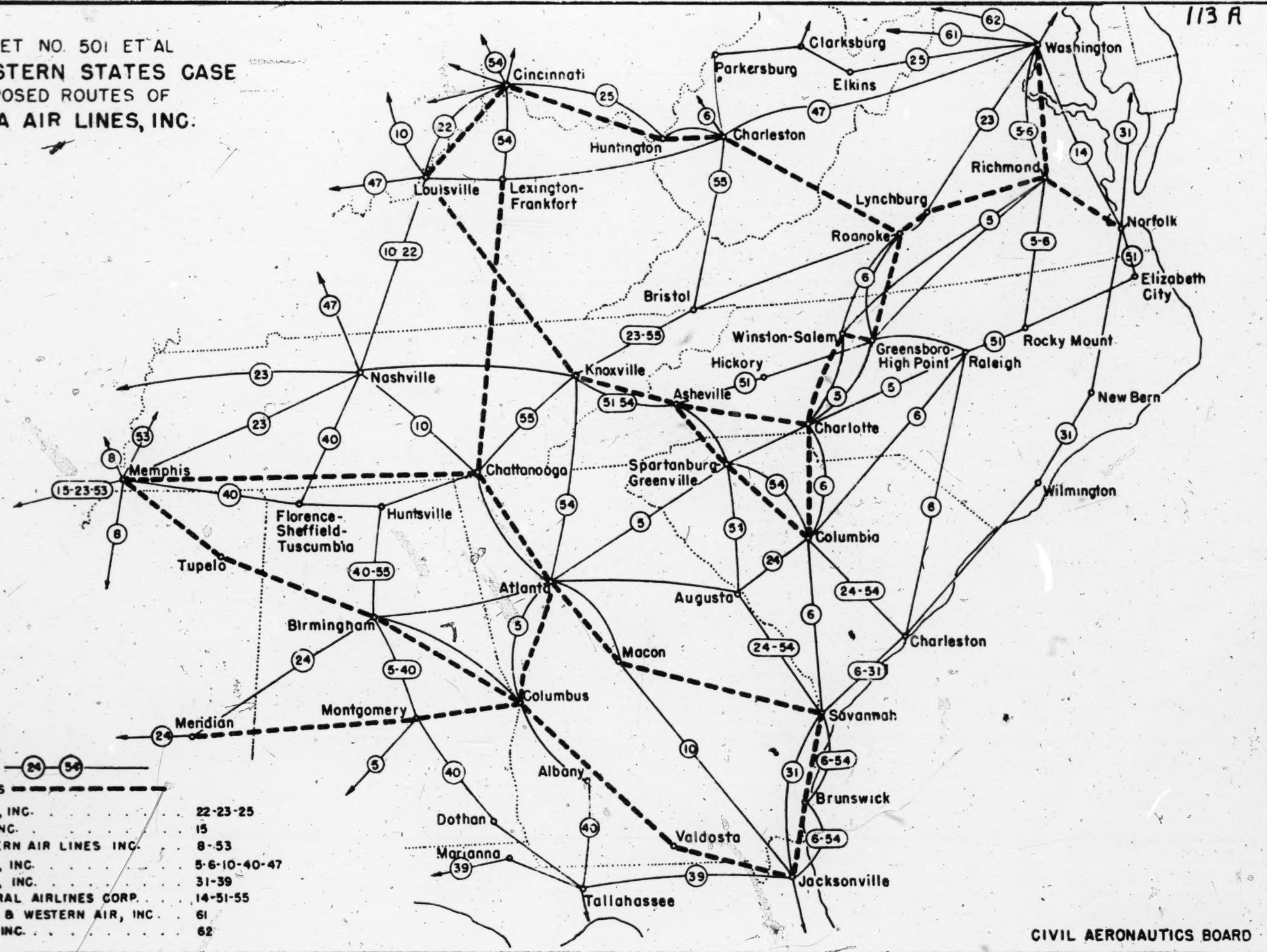
DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

DELTA AIR LINES, INC.



DELTA AIR LINES, INC.

EXISTING ROUTES — 24 — 54

PROPOSED ROUTES - - - - -

AMERICAN AIRLINES, INC.	22-23-25
BRANIFF AIRWAYS, INC.	15
CHICAGO AND SOUTHERN AIR LINES INC.	8-53
EASTERN AIR LINES, INC.	5-6-10-40-47
NATIONAL AIRLINES, INC.	31-39
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-51-55
TRANSCONTINENTAL & WESTERN AIR, INC.	61
UNITED AIR LINES, INC.	62

CIVIL AERONAUTICS BOARD

659

11720

11926

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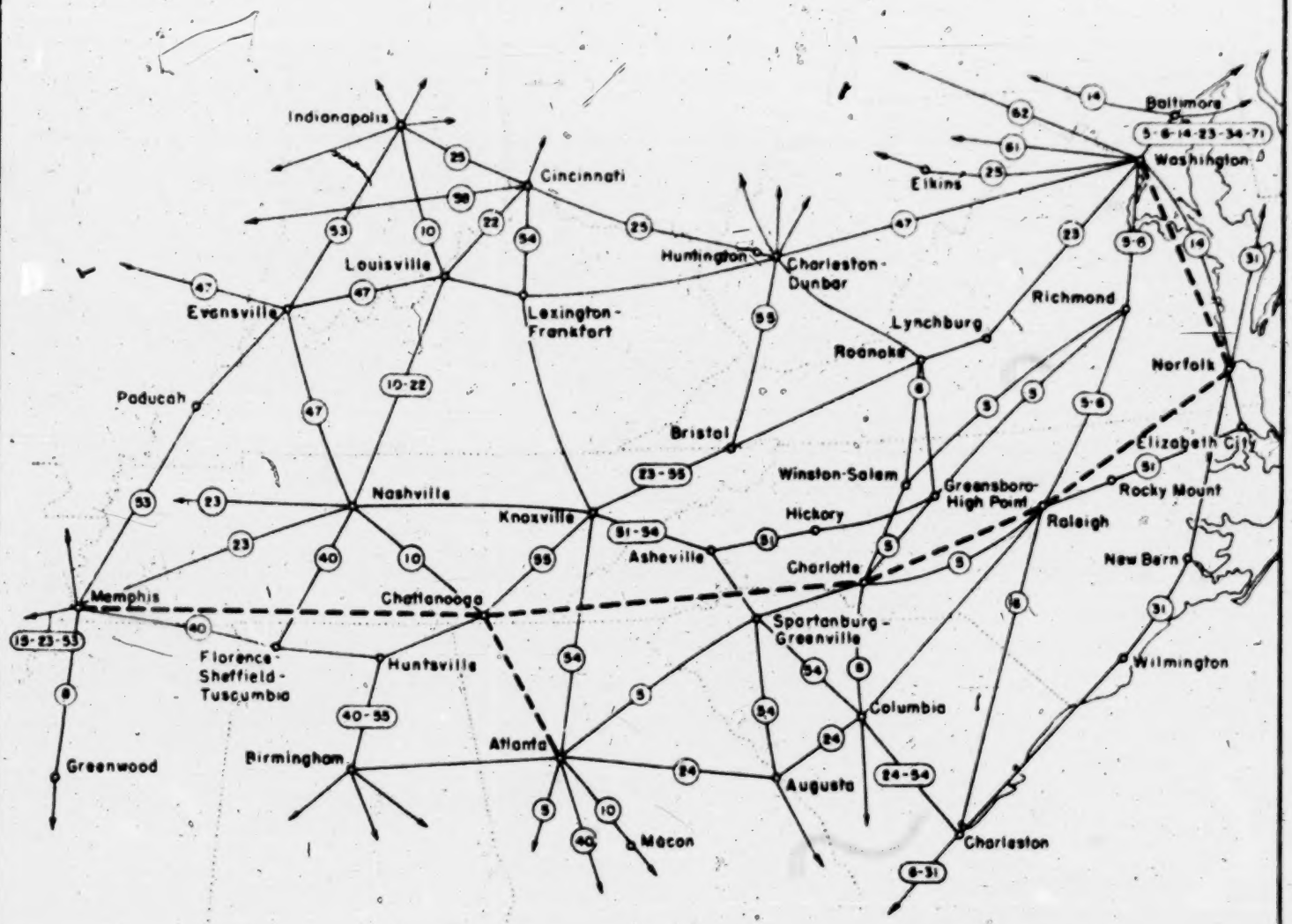
DOCKET NO 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

BRANIFF AIRWAYS, INC.



BRANIFF AIRWAYS, INC

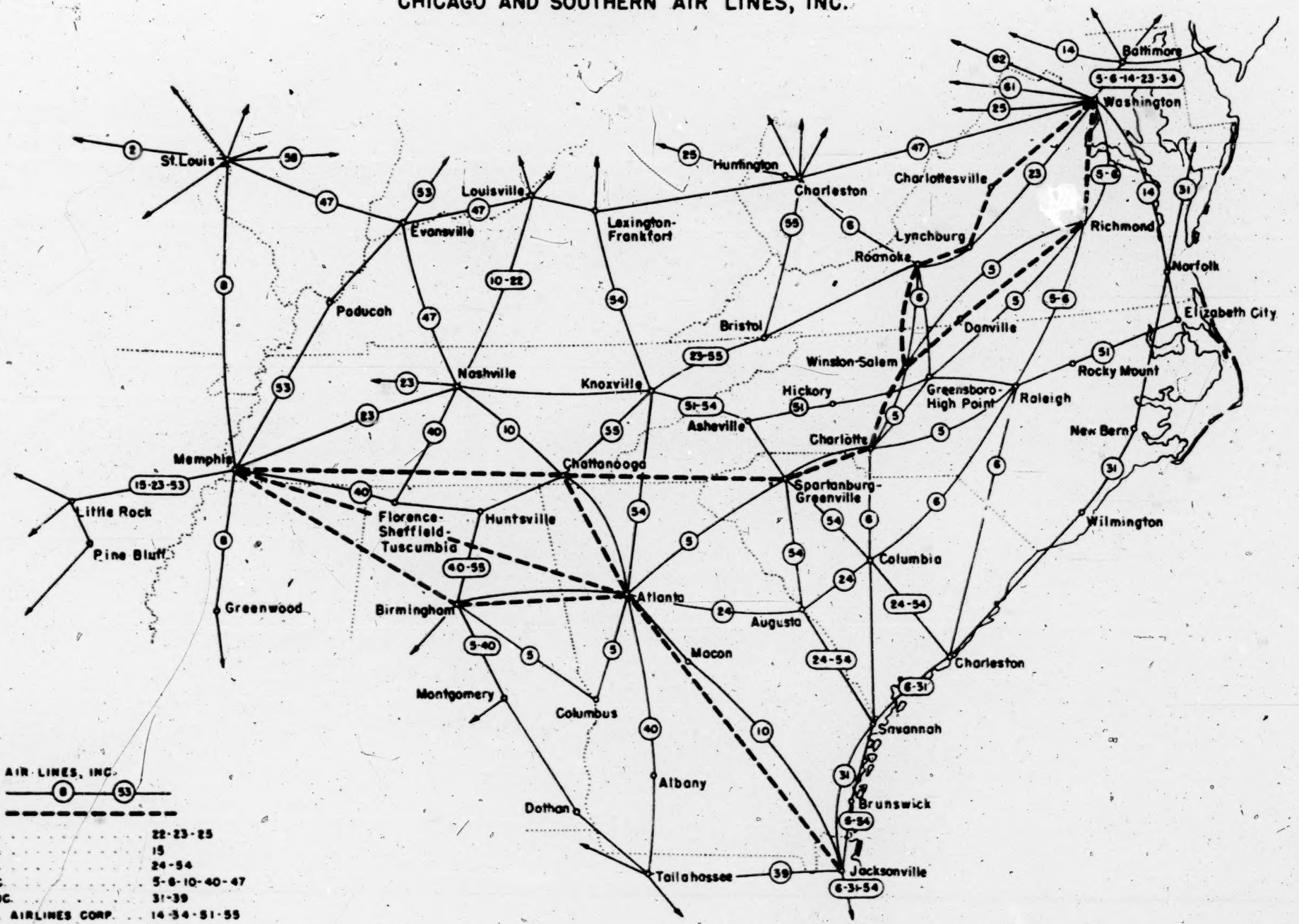
EXISTING ROUTES —(15)—

PROPOSED ROUTES - - - - -

AMERICAN AIRLINES, INC.	22-23-25
COLONIAL AIRLINES, INC	71
CHICAGO AND SOUTHERN AIR LINES, INC.	8-53
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC	5-6-10-40-47
NATIONAL AIRLINES, INC	31
PENNSYLVANIA-CENTRAL AIRLINES CORP	14-34-51-55
TRANSCONTINENTAL & WESTERN AIR, INC	58-61
UNITED AIR LINES, INC	62

CIVIL AERONAUTICS BOARD

DOCKET NO. 501 ET AL
SOUTHEASTERN STATES CASE
PROPOSED ROUTES OF
CHICAGO AND SOUTHERN AIR LINES, INC.



CHICAGO AND SOUTHERN AIR LINES, INC.
EXISTING ROUTES — 8 — 53
PROPOSED ROUTES - - - - - - -

AMERICAN AIRLINES, INC.	22-23-25
BRANIFF AIRWAYS, INC.	15
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-6-10-40-47
NATIONAL AIRLINES, INC.	31-39
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-34-51-55
TRANSCONTINENTAL & WESTERN AIR, INC.	58-61
UNITED AIR LINES, INC.	62

CIVIL AERONAUTICS BOARD

661

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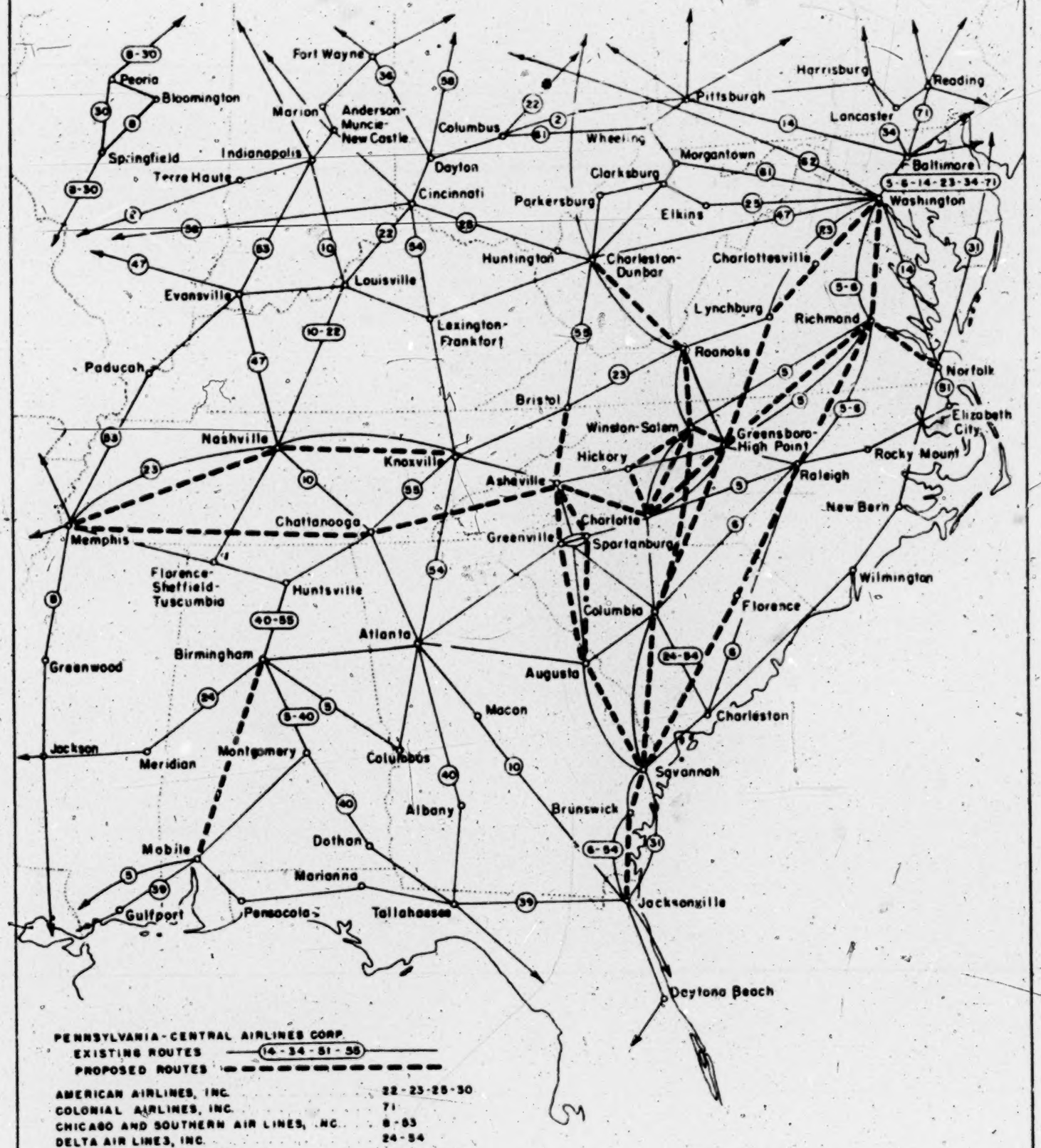
DOCKET NO 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

PENNSYLVANIA-CENTRAL AIRLINES CORPORATION



PENNSYLVANIA-CENTRAL AIRLINES CORP.
EXISTING ROUTES — 14-34-81-58
PROPOSED ROUTES - - - - - -

AMERICAN AIRLINES, INC.	22-23-28-30
COLONIAL AIRLINES, INC.	71
CHICAGO AND SOUTHERN AIR LINES, INC.	8-83
DELTA AIR LINES, INC.	24-54
EASTERN AIR LINES, INC.	5-6-10-40-47
NATIONAL AIRLINES, INC.	31-39
TRANSCONTINENTAL & WESTERN AIR, INC.	2-36-44-58-61
UNITED AIR LINES, INC.	68

CIVIL AERONAUTICS BOARD

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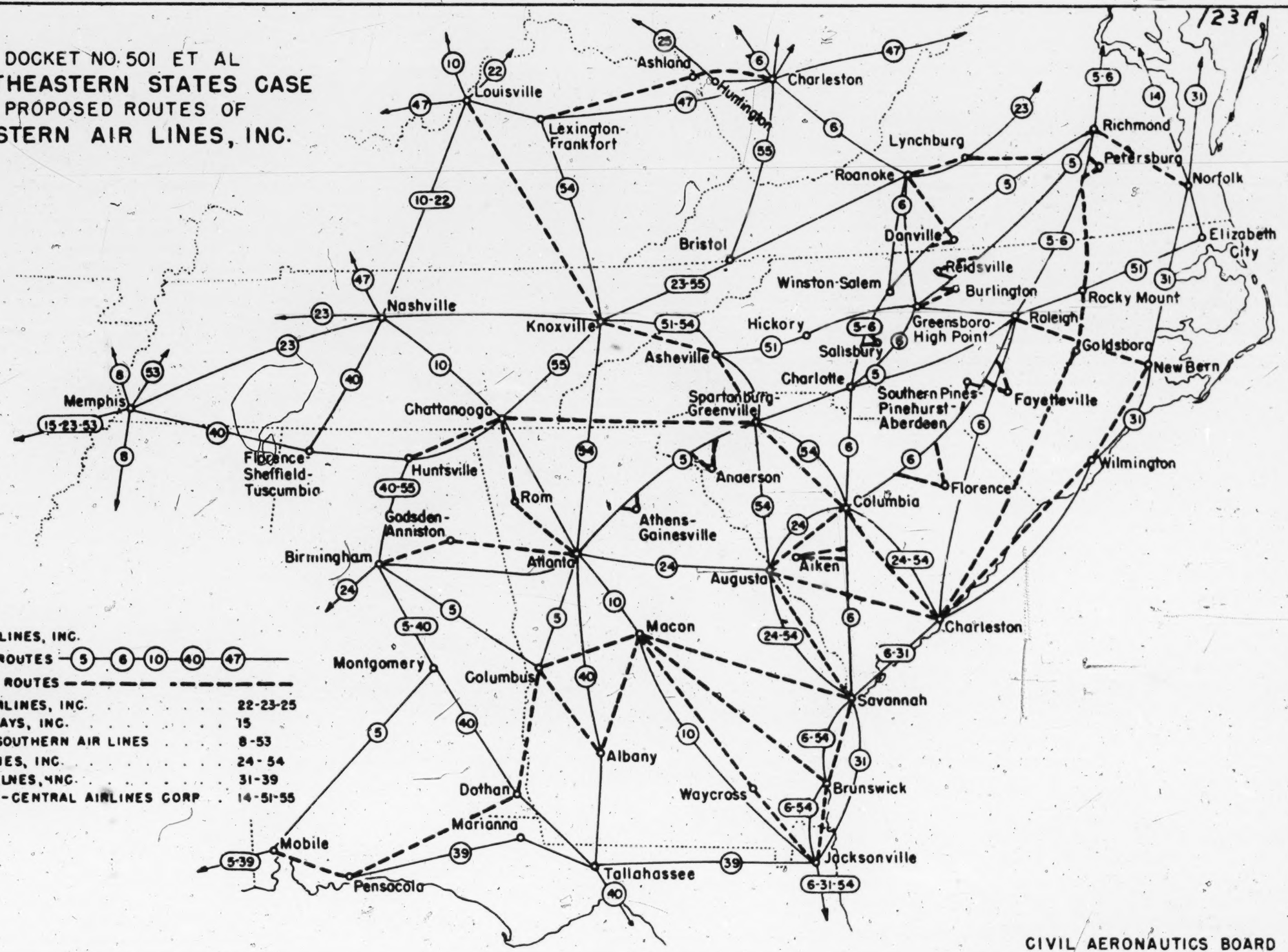
DOCKET NO. 501 ET AL
SOUTHEASTERN STATES CASE
PROPOSED ROUTES OF
EASTERN AIR LINES, INC.



EASTERN AIR LINES, INC.
EXISTING ROUTES — 5 — 6 — 10 — 40 — 47 —
PROPOSED ROUTES - - - - - - - - - - - -

AMERICAN AIRLINES, INC.	22-23-25
BRANIFF AIRWAYS, INC.	15
CHICAGO AND SOUTHERN AIR LINES	8-53
DELTA AIR LINES, INC.	24-54
NATIONAL AIRLINES, INC.	31-39
PENNSYLVANIA-CENTRAL AIRLINES CORP.	14-51-55

CIVIL AERONAUTICS BOARD

663

11734

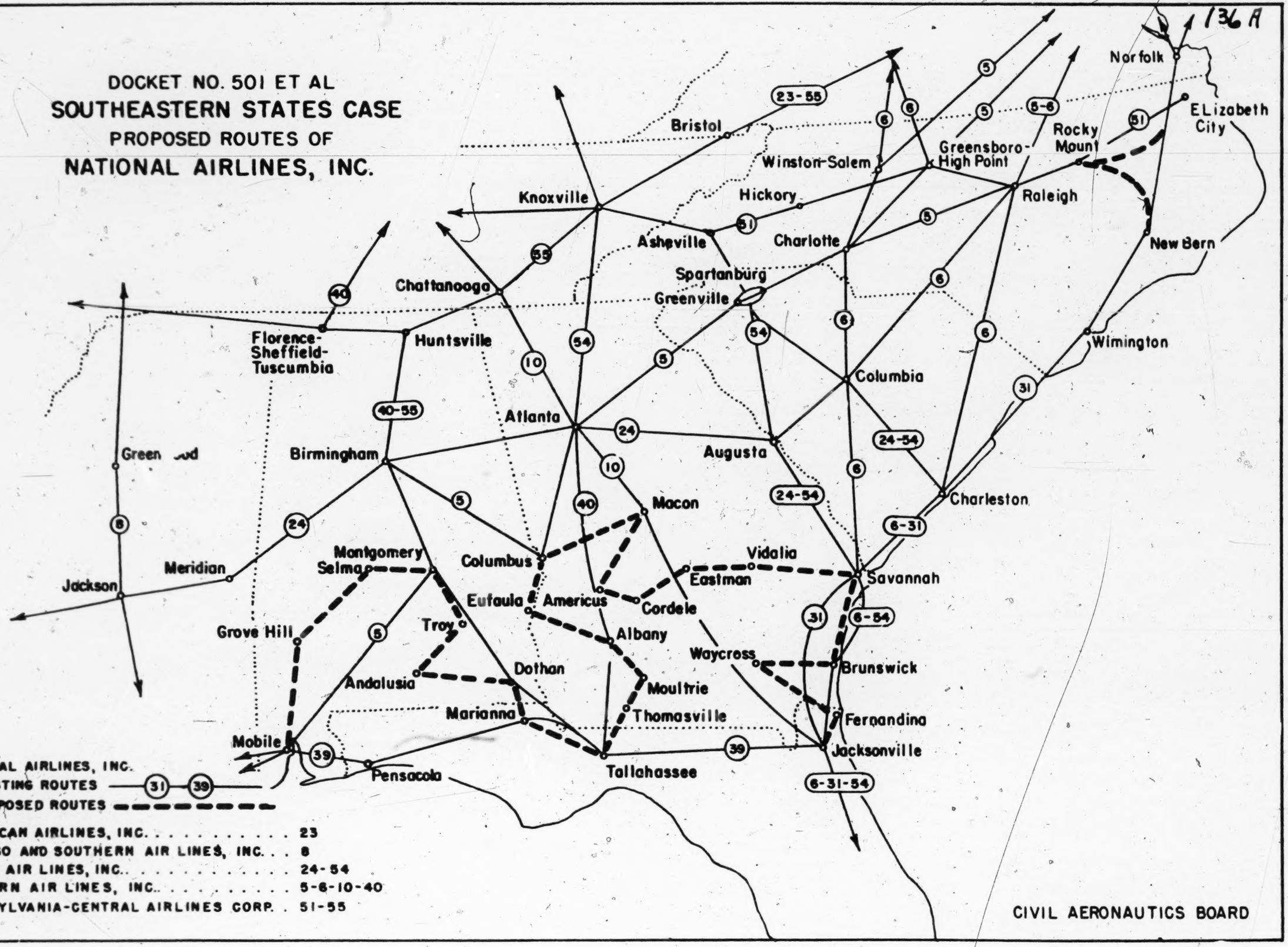
136 A

DOCKET NO. 501 ET AL

SOUTHEASTERN STATES CASE

PROPOSED ROUTES OF

NATIONAL AIRLINES, INC.



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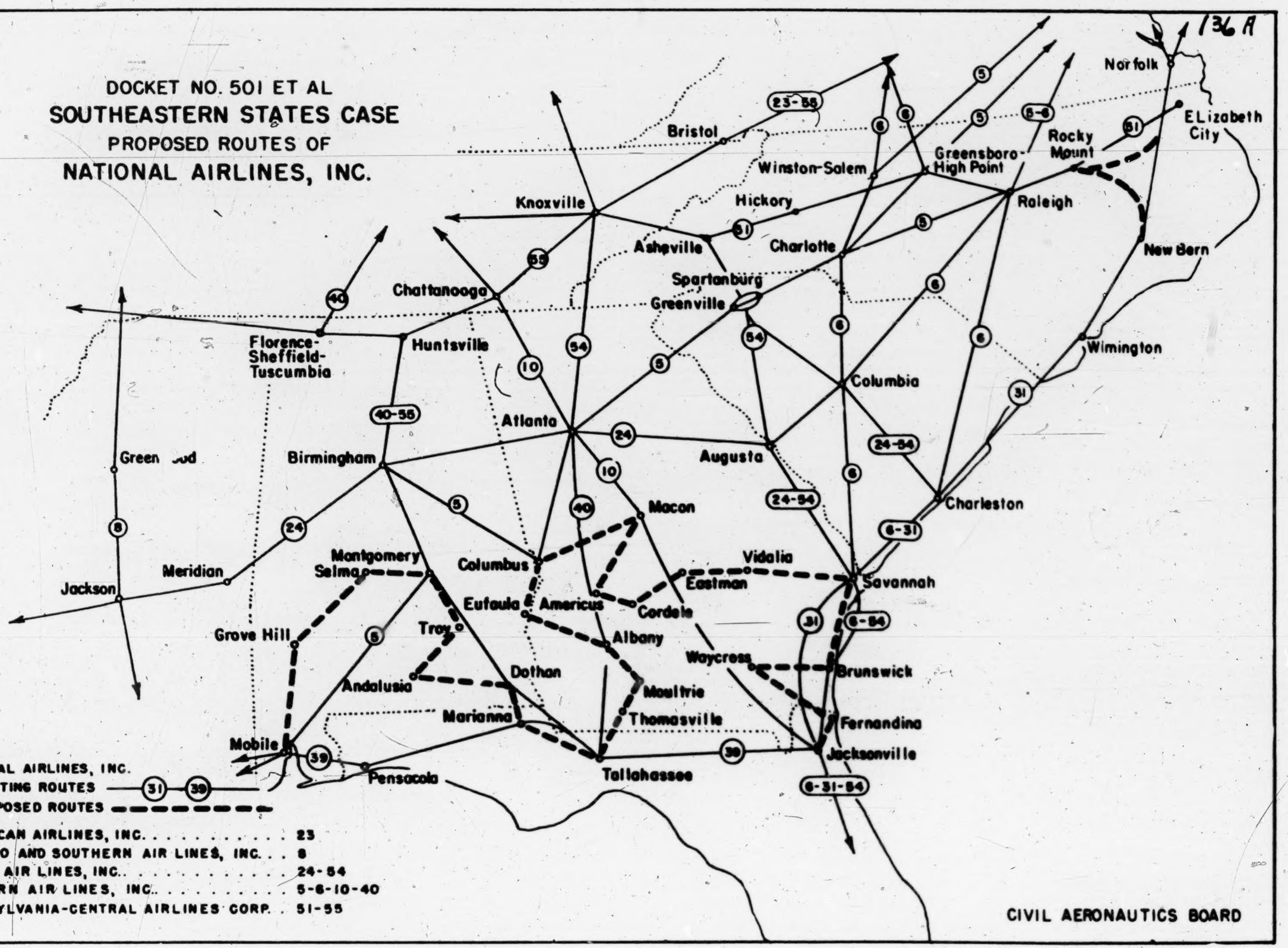
136 A
DOCKET NO. 501 ET AL
SOUTHEASTERN STATES CASE
PROPOSED ROUTES OF
NATIONAL AIRLINES, INC.
Norfolk
Elizabeth City
Rocky Mount
Greensboro-High Point
Winston-Salem
Bristol
Raleigh
Hickory
Knoxville
Asheville
Charlotte
New Bern
Spartanburg
Greenville
Chattanooga
Florence-Sheffield-Tuscumbia
Huntsville
Wimington
Columbia
Atlanta
Augusta
Birmingham
Charleston
Macon
Montgomery
Selma
Columbus
Vidalia
Eastman
Savannah
Meridian
Jackson
Eufaula
Americus
Cordele
Grove Hill
Troy
Albany
Waycross
Brunswick
Andalusia
Dothan
Moultrie
Marianna
Thomasville
Fernandina
Mobile
Jacksonville
Pensacola
Tallahassee
NATIONAL AIRLINES, INC.
EXISTING ROUTES
PROPOSED ROUTES
AMERICAN AIRLINES, INC. 23
CHICAGO AND SOUTHERN AIR LINES, INC. . . 8
DELTA AIR LINES, INC. 24-54
EASTERN AIR LINES, INC. 5-6-10-40
PENNSYLVANIA-CENTRAL AIRLINES CORP. . 51-55
CIVIL AERONAUTICS BOARD

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(2) Amendment to Application of Southern Aviation Corp., Volume 1 of Record.

(R. 57) WHEREFORE, Applicant prays the Board to be permitted to amend its Application further; and prays that the Civil Aeronautics Board, after due inquiry and investigation, and in lieu of the authority sought in the Original Application and Amendment, issue to Applicant either a Temporary or Permanent Certificate of Public Convenience and Necessity authorizing Applicant to engage in the scheduled transportation by air of mail, passengers and property between the towns, cities and intermediate points on Routes A, B, C, D, E (Revised) and F as set forth in (R. 58) the Original Application and Amendment thereto; and for such other and further authorities as the circumstances may warrant.

(3) Application of Atlantic and Carolina Airways Company, Volume 1 of Record.

(R. 144) 6. This application for specific routes designated herein shall not be deemed as restricting the Board from changing the routes as the Board may deem proper to meet the requirements of public convenience and necessity within the general area in which the applicant is seeking to serve. And, in fact, the applicant requests that such subject be considered in the light of the public needs, and that the routes be changed as the judgment of the Board may dictate.

WHEREFORE, this applicant prays that the Board enter an order issuing to the applicant a permanent certificate or permanent certificates of public convenience and necessity authorizing both scheduled and contract transportation by air of persons, property and mail as described herein and in accordance with this application, and for any other and further relief as in the judgment of the Board may be proper.

(4) Application of Braniff Airways, Volume 1 of Record.

(R. 312) 3. Application is made herein for a permanent certificate of public convenience and necessity, or for a permanent amendment of Applicant's present certificate for Route No. 15, authorizing Applicant to engage in air transportation of persons, property and mail in scheduled operations between the terminal point Memphis, Tennessee, the intermediate points Chattanooga, Tennessee; Charlotte, North Carolina; Raleigh, North Carolina; Norfolk, Virginia; Washington, D. C.; and Philadelphia, Pennsylvania, and the co-terminal points Newark, New Jersey—New York, New York. Applicant is willing and desires to serve any other community along the proposed route to which the Board may deem service required by the public convenience and necessity.

WHEREFORE, Applicant prays that the Board issue to Applicant a permanent certificate of public convenience and necessity, or a permanent amendment of Applicant's certificate of public convenience and necessity for Route No. 15, authorizing Applicant to engage in air transportation of persons, property and mail in scheduled operations between the terminal point Memphis, Tennessee, the intermediate points Chattanooga, Tennessee; Charlotte, North Carolina; Raleigh, North Carolina; Norfolk, Virginia; Washington, D. C.; and Philadelphia, Pennsylvania, and the co-terminal points Newark, New Jersey—New York, New York, and for such other and further relief as the circumstances may warrant.

(5) Application of Delta Air Corporation, Volume 1 of Record.

(R. 323) Applicant alleges that the service sought in the foregoing application is in response to demands of public convenience and necessity, and therefore prays the Board to issue cetificates of convenience and necessity authorizing such transportation as set forth herein and for such other and further relief as the Board may deem appropriate and to which the Applicant may be entitled in the premises, the

Applicant specifically invoking in connection therewith sections 401(d) and (h) of the Act.

(6) Application of National Airlines, Inc., Volume 1 of Record.

(R. 331) 4. Applicant further requests that the Board grant to it the authority to serve such other intermediate or terminal points and/or such other alternate combinations of cities or routes in the area included within this application as the Board may deem to be in the public interest.

WHEREFORE, Applicant prays that the Board grant in whole or in part the authority requested herein and such other and further relief as the public convenience and necessity and/or the public interest shall require.

(7) Application of Eastern Air Lines, Inc., Volume 1 of Record.

(R. 346) 17. Applicant desires and hereby applies for authority to serve any point or points having reasonable proximity to the cities named herein, and any point or points which may be included in any application or applications which may be consolidated with this Application for hearing or decision.

WHEREFORE, Applicant prays that the Board grant the authorizations sought in this Application, and grant such other, further and different relief as the Board may deem appropriate.

(8) Application of Pennsylvania-Central Airlines Corp., Volume 1 of Record.

(R. 374) And for any and all routes which the Civil Aeronautics Board may find to be required by the public convenience and necessity and the national policy whether said routes be within the general area herein applied for or otherwise.

(R. 375) WHEREFORE, the Applicant prays that the Board enter an appropriate order, or orders, issuing to Applicant

permanent and/or temporary certificates of public convenience and necessity, or Amendments to the Applicant's existing certificates authorizing Applicant to engage as an air carrier of persons, property and mail in scheduled air transportation on the routes herein above described and set forth and for such other route or routes serving that general area or otherwise that the Board may conclude public convenience and necessity require. Applicant also prays for such other, further and different relief as the Board may deem appropriate and to which the Applicant may be entitled in the premises, the Applicant specifically invoking in connection therewith Section 401(h) of the Act.

(9) Application of Chicago and Southern Air Lines, Volume 1 of Record,

(R. 442) WHEREFORE, Applicant prays that the Board set this application for hearing and that the Board issue to it a certificate of public convenience and necessity authorizing Applicant to engage as an air carrier in the scheduled air transportation of persons, property and mail between the points and over the routes herein above specified, and Applicant further prays for such additional or other authority as in the circumstances the Board may deem appropriate, including the issuance to Applicant of a certificate or certificates authorizing the scheduled air transportation of persons, property and mail between any additional or other terminal and/or intermediate points or for any new route or routes, or the amendment of any one or more of Applicant's presently certificated routes, which the Board may find required by the public convenience and necessity, the foregoing being limited only to the area served by Applicant's presently certificated routes, the area proposed to be served by this application, and th area proposed to be served by any application which the Board may see fit to consolidate for hearing with this application.

(10) Application of Colonial Airlines, Inc., Volume 1 of Record. A portion of the applicant's "WHEREFORE" paragraph.

(R. 463) Applicant further requests that such certificate or certificates for said routes, or any portion of said routes, be granted by any intermediate point or combination of inter-
(R. 464) mediate points in the general area of the routes applied for, whether or not named above, to which the Civil Aeronautics Board shall determine that air transportation service is required in the public interest.

(11) Application of Southeastern Air Express, Inc., Volume 2 of Record.

(R. 562) V

That Applicant desires and hereby applies for authority to serve any point or points having a reasonable proximity to the cities or routes named herein and any point or points which may be included in any application or applications which may be consolidated with this application for hearing or decision, provided the Board shall fine such service to be required by the public convenience and necessity.

(R. 563) WHEREFORE, the above premises considered, Applicant prays that the Civil Aeronautics Board acting pursuant to the provisions of Section 401 (h), Section 401 (d), and such other provisions of the Civil Aeronautics Act of 1938, as amended, as may be relevant will issue a permanent certificate and/or temporary certificate of public convenience and necessity authorizing the Applicant to engage in air transportation in scheduled operations with respect to mail, persons and property over the proposed route system as herein set forth, or any Division thereof or part thereof which the Board, in its wisdom, may find to be in the public convenience and necessity.

(12) Application of American Airlines, Volume 2 of Record.

(R. 677) (i) By enumerating the foregoing additions, consolidations, and extensions of existing routes and requests for new routes, Applicant does not intend that the designated terminal and intermediate points shall be to the exclusion

of others not specifically named, and Applicant hereby requests authority to engage in scheduled air transportation with respect to persons, property and mail not only as herein set forth, but between such other or additional terminal and (R. 678) intermediate points within the areas proposed to be served by this application and any other application consolidated for hearing with this application or any part thereof, as the Board shall determine to be in the public interest, and as the Applicant shall then indicate its fitness, willingness, and ability to serve.

(13) Application of Gillespie Airways, Volume 1 of Record.

(R. 110) Wherefore, Applicant prays that the Board enter an order issuing to Applicant a permanent Certificate of Public Convenience and Necessity authorizing the institution of operations of the air line service herein described, including conduct of charter service to, from or between points on such operations, and for such other and further authority as he may be entitled in the premises.

(14) Application of Commonwealth Air Transport, Volume 1 of Record.

(R. 177) WHEREFORE, Applicant, Commonwealth Air Transport, Inc., prays as in the original and amended application and that if it be not possible that a permanent certificate of public convenience and necessity issue to applicant, then that a temporary certificate issue authorizing the institution of operations by applicant of the air transport service heretofore described, including the conduct of charter service within the limits of the United States and for such other and further authority as it may be entitled to in the premises.

(15) Report of Prehearing Conference, Volume 2 of Record.

[R. 736]

Amendments.

The Examiners stated that all amendments to applications consolidated in this proceeding must be filed within ten days of the date of service of this prehearing conference report and a copy of each amendment must be served upon all parties listed on the title page of this report. Attention is directed to the geographical scope of the consolidated proceeding as determined by the Board's order of consolidation which is attached to this report. No amendments proposing service outside the geographical scope of this area will be considered.

Catch all clause.

The Examiners referred to the so-called catch all clause usually contained in an application and pointed out while there is no objection to the use of this clause for the purpose of enabling the Board to grant a certificate to a point or points not specifically named in the application, the use of the catch all clause will be limited specifically to that purpose and no evidence will be received with respect to cities or routes which are not specifically set forth in the application.

(16) Exhibits filed by Chicago and Southern Air Lines, Volume 9 of Record.

(R. 5134) In Docket No. 1717 Braniff proposes a route from Memphis to Washington via Chattanooga, Charlotte, Raleigh and Norfolk. This application is quite similar to Chicago and Southern's application in Docket No. 1767 proposing service between Memphis and Washington via Chattanooga, Greenville-Spartanburg, Charlotte, Winston-Salem (Greensboro-High Point), Danville, Roanoke, Lynchburg, Charlottesville and Richmond.

Inasmuch as the original applications of both carriers contain broad general prayer provisions, it would appear that the particular cities named are of little relative importance (except as some indication of the carrier's ability to judge the

service needs involved), the ultimate decision as to the particular points to be named as intermediates being left to the judgment of the Board. Consequently we have set up our comparisons on the basis of *all* the cities named by *both* carriers.

(17) Written testimony of E. J. Ridley, Vice President of Colonial Airlines, Volume 10 of Record.

(R. 5495) In this area proceeding as in others to which Colonial has been a party, Colonial's policy is to request what it conceives to be scheduled services within the area that would serve the greatest number of cities to the best public advantage. These patterns of service are applied for as separate routes and for convenience Colonial's exhibits are prepared so as to show the scheduling of equipment, revenue and expense separately for each route. Actually, however, Colonial in this proceeding is seeking authorization to operate scheduled air transportation service carrying passengers, property and mail between the terminal Washington, D. C. on the north and Jacksonville and/or Tallahassee on the south via any or all of the intermediate points named in its application on the four different routings previously referred to. Also by a blanket clause of its application Colonial requests authority to serve any other points in the area that the Board (R. 5496) finds require such service.

In other words, we think that the Examiners and the Board may find that the services between these named terminals would better serve the public convenience and necessity and fit into the pattern of the overall air transportation system if routed via the intermediate points in some sequence different from that proposed by Colonial. But we concluded that it would be more helpful to the Examiners and the Board if we undertook to develop actual patterns of service based upon our investigations and experience rather than to make no suggestions of the routing of services to connect the intermediate points which we seek to serve.

(18) Testimony of Witnesses, Volumes 5 and 6 of Record.

Testimony of Mr. R. B. Babington, Jr., on behalf of South East Airlines, Inc.

(R. 3313) Q. Would South East Airlines be willing to serve any additional area if requested to do so, render any additional service? A. By the Board? Q. Yes. A. Yes, sir.

Testimony of Mr. B. M. Stuart on behalf of Blue Grass Airlines.

(R. 3708) I would like to state this, that our application filed with the Civil Aeronautics Board as amended calls for—are more easternly points at Ashland and Huntington, Kentucky by Ashland, Kentucky, Huntington, West Virginia. It might have been better if we had offered to extend our service to Charleston for connecting services with some other lines there, and if the Board saw fit to issue us a certificate and wanted and felt that we should serve Charleston we would accept that in our certificate.

Q. You mean, on indication you would immediately apply for that? A. That is right.

Q. Is that all? A. I believe that is all I have to say on this subject.

Testimony of Mr. P. G. Vondersmith on behalf of Commonwealth Air Transport, Inc.

(R. 3748) A. On page 4, the following statement is made: "It will accept additional authority that may be granted covering service within or adjacent to the territory proposed to be served."

I hope the Board will construe that as a clear and full indication of our intentions, but in case it should not do so, we want to amend our application so as to request authorization to serve any and all points which the Board (R. 3749) may find service—rather to which the Board may find service required by public convenience and necessity.

(19) Oral Argument before the Board, Volume 27 of Record.

Counsel appearing for Southern Airways:

(R. 14640) I wish to make it clear, however, that we will enthusiastically enter upon the conduct of any routes in (R. 14611) this neighborhood that the Board in its wisdom will decide upon.

Question to and Answer of Counsel for Prairie Airlines:

(R. 14873) Mr. Branch: Does your application contain the catch-all clause which means that you would serve any other point if the Board should authorize it? Mr. Ward: Yes, sir.

Question to and Answer of Counsel for Seaboard Air Transport:

(R. 14885) Mr. Lee: Does your application have the catchall clause? Mr. McDonald: Yes, it does. Mr. Lee: You would be willing to serve any points in that general area that the Board might certificate? Mr. McDonald: Yes, and I allude to that a little later. Thank you, sir.

Counsel appearing for South East Airlines, Inc.:

(R. 14904) The real issues in the feeder phase of this case are two:

First, does the public convenience and necessity require any local or feeder air service in this area, and if it does, which of the applicants presently before the Board is best qualified and able to develop the necessary service.

Question to and Answer of Counsel for Southern Aviation Corp.:

(R. 14931) Mr. Lee: Would you like to accept any route pattern that the Board might certificate you for? Mr. Brown: I have an omnibus clause in the statement and I have the statement about four times in the brief that that I would do that, just to be sure that I would not overlook it.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Wednesday, December 8, 1948

* * * * *

Before Honorable Henry W. Edgerton, Bennett Champ Clark, and E. Barrett Prettyman, Circuit Judges:

* * * * *

No. 9748, October Term, 1948

STATE AIRLINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

Argument commenced by Mr. Frederick W. P. Lorenzen, attorney for petitioner, continued by Messrs. Edward Dumbauld, attorney for respondent and Robert B. Hankins, attorney for intervenor Piedmont Aviation, Inc., and concluded by Mr. Frederick W. P. Lorenzen for petitioner.

* * * * *

United States Court of Appeals for the District of Columbia Circuit

No. 9748

STATE AIRLINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

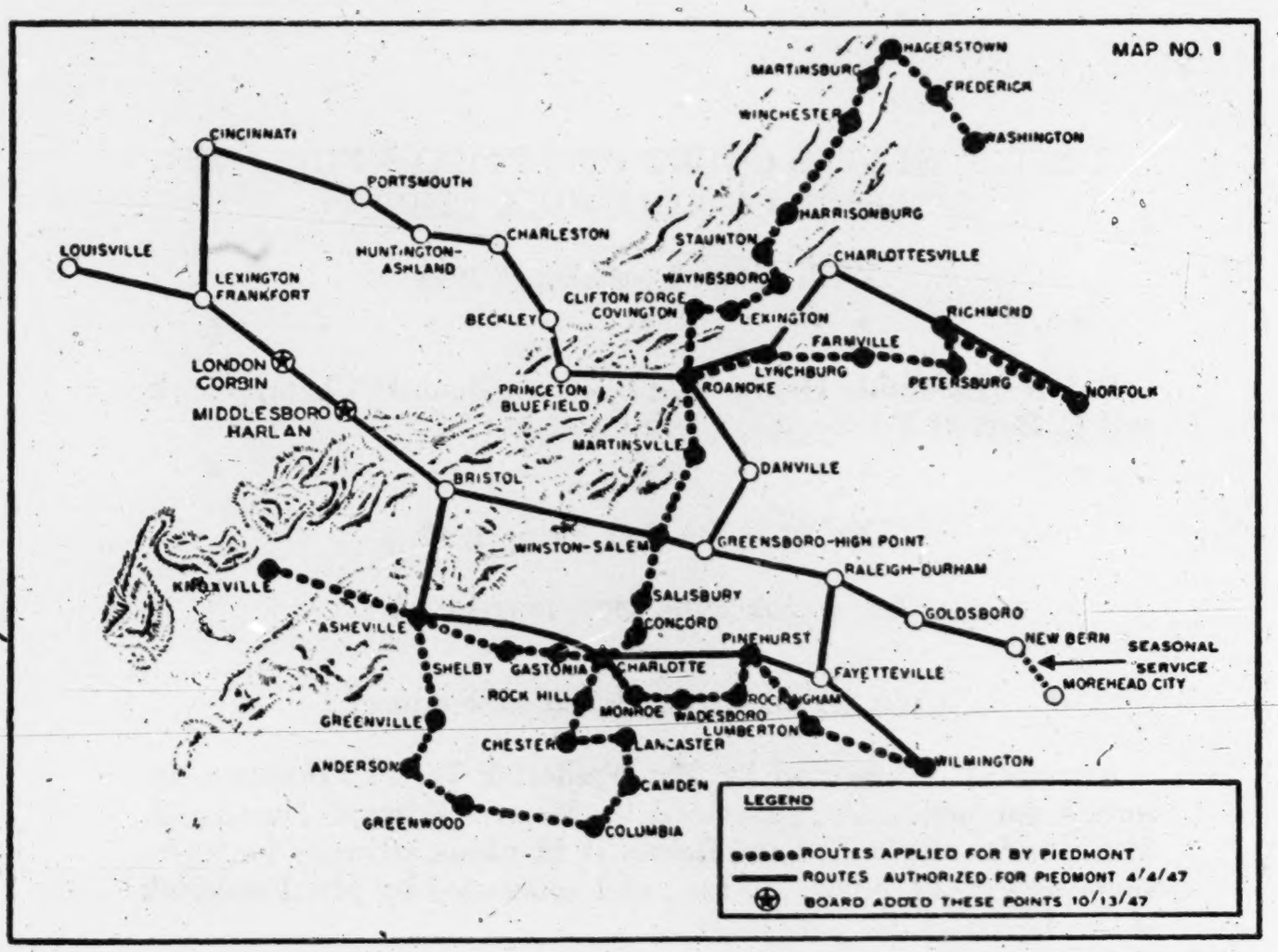
PIEDMONT AVIATION, INC., INTERVENOR

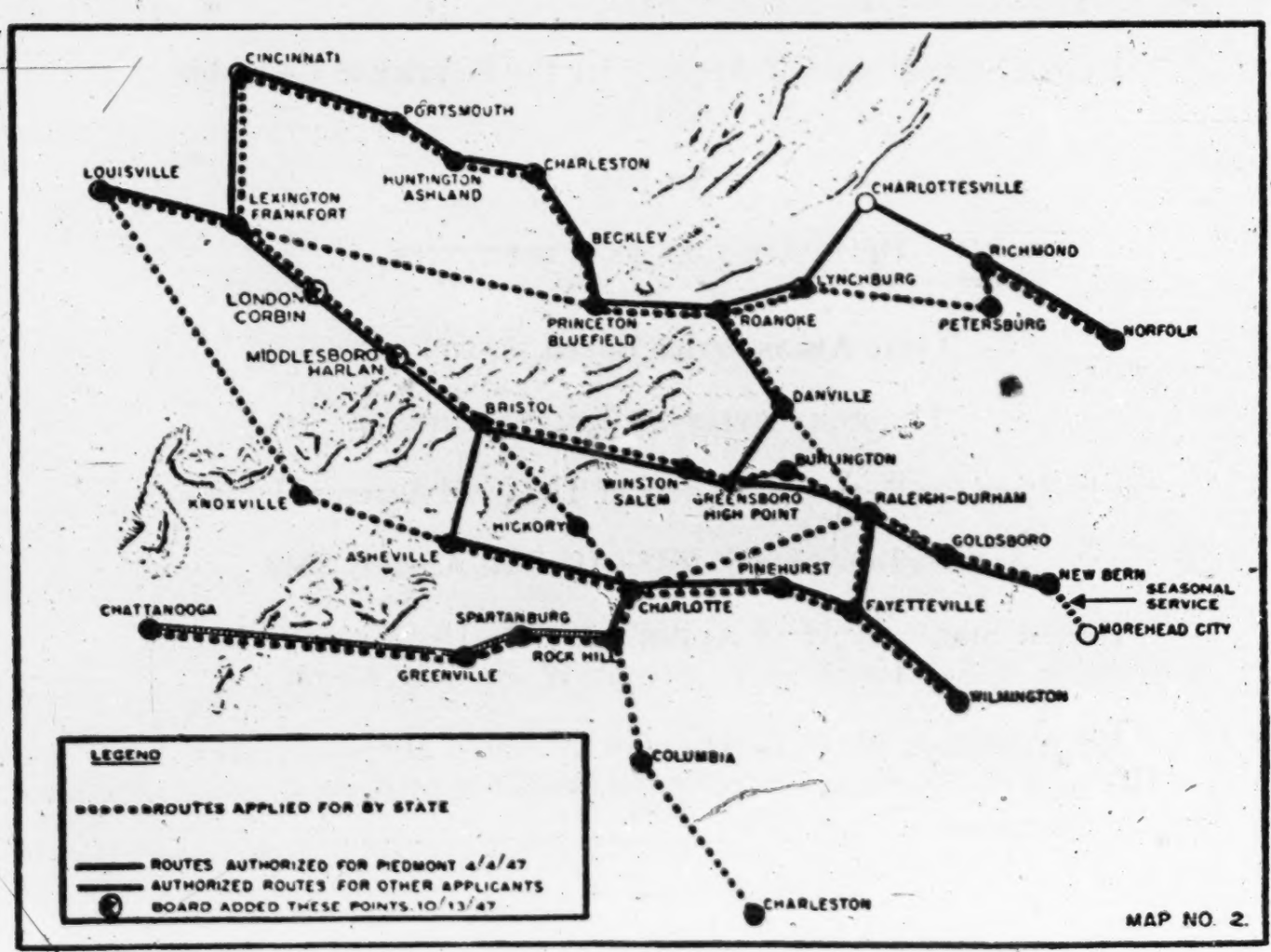
On Petition for Review of Orders of The Civil Aeronautics Board

Argued December 8, 1948—Decided April 6, 1949

United States Court of Appeals for the District of Columbia Circuit. Filed Apr. 6, 1949. Joseph W. Stewart, Clerk.

Mr. Frederick W. P. Lorenzen, with whom Messrs. Wilmer A. Hill and Philip Schleit were on the brief, for petitioner.


MAP NO. 1
HAGERSTOWN
MARTINSBURG
FREDERICK
WINCHESTER
WASHINGTON
CINCINNATI
PORTSMOUTH
HARRISONBURG
CHARLESTON
STAUNTON
HUNTINGTON-ASHLAND
LOUISVILLE
CHARLOTTESVILLE
LEXINGTON FRANKFORT
WAYNESBORO
CLIFTON FORGE COVINGTON
LEXINGTON
RICHMOND
BECKLEY
FARMVILLE
LONDON CORBIN
LYNCHBURG
PETERSBURG
NORFOLK
PRINCETON BLUEFIELD
ROANOKE
MIDDLESBORO HARLAN
MARTINSVILLE
DANVILLE
BRISTOL
WINSTON-SALEM
GREENSBORO-HIGH POINT
RALEIGH-DURHAM
KNOXVILLE
SALISBURY
GOLDSBORO
ASHEVILLE
CONCORD
PINEHURST
NEW BERN
SEASONAL SERVICE
SHELBY
GASTONIA
CHARLOTTE
FAYETTEVILLE
MOREHEAD CITY
ROCK HILL
ROCKINGHAM
MONROE
WADESBORO
GREENVILLE
LUMBERTON
CHESTER
LANCASTER
WILMINGTON
ANDERSON
CAMDEN
GREENWOOD
COLUMBIA
LEGEND
ROUTES APPLIED FOR BY PIEDMONT
ROUTES AUTHORIZED FOR PIEDMONT 4/4/47
BOARD ADDED THESE POINTS 10/13/47


CINCINNATI
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LONDON CORBIN
LYNCHBURG
PRINCETON BLUEFIELD
ROANOKE
PETERSBURG
NORFOLK
MIDDLESBORO HARLAN
DANVILLE
BRISTOL
BURLINGTON
WINSTON-SALEM
GREENSBORO HIGH POINT
RALEIGH-DURHAM
KNOXVILLE
HICKORY
GOLDSBORO
ASHEVILLE
PINEHURST
NEW BERN
SEASONAL SERVICE
CHATTANOOGA
SPARTANBURG
CHARLOTTE
FAYETTEVILLE
MOREHEAD CITY
ROCK HILL
GREENVILLE
WILMINGTON
COLUMBIA
CHARLESTON
LEGEND
ROUTES APPLIED FOR BY STATE
ROUTES AUTHORIZED FOR PIEDMONT 4/4/47
AUTHORIZED ROUTES FOR OTHER APPLICANTS
BOARD ADDED THESE POINTS 10/13/47
MAP NO. 2.

Mr. Edward Dumbauld, Special Assistant to the Attorney General, with whom Messrs William D. McFarlane, Special Assistant to the Attorney General, Herbert A. Bergson, Assistant Attorney General, Emory T. Nunneley, Jr., General Counsel, John H. Wanner, Assistant General Counsel, Oliver Carter, Acting Chief, Enforcement and Litigation Section, O. D. Ozment and J. A. Seeley, Attorneys, Civil Aeronautics Board, were on the brief for respondent. Mr. Edward J. Hickey, Jr., Special Assistant to the Attorney General, also entered appearance for respondent.

Mr. Robert B. Hankins, with whom Mr. Charles H. Murchison was on brief for intervenor Piedmont Aviation, Inc.

Before EDGERTON, CLARK, and PRETTYMAN, JJ.

CLARK, J.: The case comes before us on a petition to review certain orders of the respondent Civil Aeronautics Board (hereinafter called the Board or respondent), insofar as those orders grant a certificate of public convenience and necessity to Piedmont Aviation, Inc. (hereinafter called Piedmont or intervenor), and deny the application of State Airlines, Inc. (hereinafter called State or petitioner), for such a certificate. There is now no question as to the finality of the orders under review.[1]

Those orders had their origin in a so-called "area proceeding" before the Board in a case known below as the Southeastern States Case. This area proceeding was a consolidated proceeding involving some 45 applications by 25 airline companies (including State and Piedmont) for authority to provide proposed services in a geographical area which included all or a part of about 14 states in southeastern United States. However, we are here concerned with, and shall in the main refer to, only so much of the area proceeding as concerns State and Piedmont. Although this proceeding also treated with applicants for through or "trunk-line" services in southeastern United States, we shall focus our attention on only the local or "feeder" air transportation services sought in that area since both Piedmont and State were applicants for "feeder" services.

The numerous applications which came within the geographical scope of the proceeding were consolidated for hearing and a lengthy hearing was held in Greensboro, North Carolina, before Examiners Newmann and Henderson.[2] This hearing commenced in May and ran through the greater part of June of 1945. Both

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[1] A prior petition, in our docket No. 9604, to review some of the same orders now under review was filed in this court on July 18, 1947. That prior petition was dismissed as premature by this court on September 3, 1947.

[2] Section 1004 (a) of the Civil Aeronautics Act of 1938, 52 Stat. 1021 (1938), as amended, 49 U. S. C. § 644 (a) (1946) authorizes this procedure in the following language: "Any member or examiner of the Board, when duly designated by the Board for such purpose, may hold hearings, sign and issue subpenas administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Board. In all cases heard by an examiner or a single member the Board shall hear or receive argument on request of either party."

State and Piedmont actively participated in this hearing and both have continued to so participate throughout the various subsequent stages of the proceeding. On June 4, 1946, the Examiners issued a 159-page report in which it was "recommended that the Board find that the public convenience and necessity require," *inter alia*, that both Piedmont and State be granted certificates authorizing their providing air transportation service over certain specified routes. The recommendation of the Examiners, generally speaking, suggested that Piedmont be given certain routes it sought running roughly north and south, no point on such routes being west of the main range of the Appalachian Mountains. The Examiners' recommendation as to State, on the other hand, urged the award to State of certain specified routes for which it had applied which ran mostly east and west and which crossed the main Appalachian range thus connecting key points in the Ohio Valley with the so-called Piedmont region of North Carolina.

Numerous exceptions to the recommendations of the Examiners were duly filed by State, by Piedmont, by Public Counsel,[3] and by others. After due notice to all interested parties, a full hearing was held before the Board, beginning August 28, 1946. The Board's first decision in the case came down in the form of an Opinion and an Order, both dated April 4, 1947. This decision, so far as concerns the case now before us, granted a temporary (3-year) certificate to Piedmont authorizing air transportation service by Piedmont to designated points along specified routes. That same decision denied the applications of State in their entirety. Since one of the critical questions in this case requires our close scrutiny of the routes ultimately awarded and of the routes sought respectively by Piedmont and by State, we reproduce below two diagrammatic maps which adequately illustrate the main route proposals of both State and Piedmont as contrasted with the authorizations granted by the Board's decision of April 4, 1947 (see Maps Nos. 1 and 2 infra).

State filed a petition for reconsideration of that decision which was granted in part, the Board having limited reargument by State and Piedmont to the question of "(1) whether the public interest requires the selection of State or Piedmont, and (2) whether the Board committed legal error by awarding the route to Piedmont." After further argument before the Board on these questions, the Board issued a supplemental opinion, dated December 12, 1947, in which it adhered to its original decision

[3] Public Counsel was at the time of these proceedings, and still is, an attorney from the staff of the Office of the General Counsel of the Board who is assigned to the case and who has a certain degree of responsibility as to the conduct of the proceedings. For the current Board regulation concerning Public Counsel and his duties, see Economic Regulation 302.2 (b) (1), 11 Fed. Reg. 177A-358 (1946), 14 Code Fed Regs § 302.2 (b) (1) (Supp. 1946).

and indicated that Piedmont would be granted the temporary certificate sought. That same day an order was entered granting to Piedmont such a certificate. Thereafter, State filed in this court its second petition for review,[4] and this court (a) denied State's motion for stay of the effectiveness of the orders of the Board being reviewed and (b) granted Piedmont's motion for leave to intervene.

The contentions of the parties to this review, as set forth in their briefs and in oral argument before us, make it clear that our decision depends upon the answers which must be given the following two questions: (1) was Piedmont, at the time of the Board's decision, an applicant for the routes it was ultimately awarded; and (2) if not, can the Board award a certificate to one who was not an applicant for the routes authorized by that certificate?

I. Was Piedmont an applicant for the routes awarded?

We reproduce immediately below the two diagrammatic maps spoken of above. These maps do not purport to show all of the points and routes applied for at any time by State and by Piedmont, nor do they attempt to portray all applications by both parties for all types of proposed service. A careful study of the very voluminous record (consisting of 29 volumes totalling close to 17,000 pages) leads us to believe that the routes shown by broken lines on the two maps are those for which the parties actually applied in the sense that they had filed applications therefor and actively, by brief and by oral argument before the Board, sought. Only such routes as included proposed passenger service are included in these maps.[5]

As indicated by the legends to the two maps above, the broken lines represent the routes sought respectively by Piedmont and by State.[6] It will be noted that the solid route lines are identical in both maps, they being, of course, those awarded to Piedmont by the Board's decision of April 4, 1947.

Turning now to a critical comparison of the routes sought by Piedmont with the routes it was awarded, we believe that even a superficial examination of Map No. 1 reveals with certainty that Piedmont did not apply for, and hence was not an applicant for, the routes which the Board has authorized it to serve. The broken lines on Map No. 1 evidence Piedmont's plan to operate

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[4] See footnote 1, supra.

[5] Piedmont's original application was much broader than that shown graphically in Map No. 1. Originally, Piedmont sought a certificate covering mail, passenger and property transportation combined with an automatic mail pick-up service. As amended, Piedmont's application still sought authority to operate the mail pick-up service but it asked separately that it be authorized to carry passengers, mail, express, and property over 5 specified routes. It is those 5 routes only which are shown by the broken lines on Map No. 1.

[6] This is true of all broken route lines on both maps excepting only the short broken line (appearing near the lower right-hand corner of both maps) between New Bern and Morehead City and indicated by an arrow and the designation "Seasonal Service."

on routes running predominantly north and south and to serve points lying east of the mountains. The only point Piedmont proposed to serve which was in any sense across the mountains was Knoxville, Tennessee, and that point is not west of the mountains and, as can be seen, was not one of the points which the Board ultimately authorized Piedmont to serve. It will also be noted from examination of Map No. 1 that Piedmont's broken-line (proposed) routes coincide exactly with the Board's (awarded) routes in only two places and there, in each case, for only very short distances and only between two adjacent points on a branch route.[7] Of the total of 39 points which Piedmont proposed to serve, only 9 lie along routes awarded by the Board. We think it completely obvious that Piedmont did not, in fact, specifically apply for the routes it was awarded by the Board.

Respondent tacitly concedes that Piedmont did not specifically apply for the awarded routes but directs the bulk of its argument on this issue to its claim that Piedmont's application was "sufficiently broad" (by virtue of a so-called "catch-all clause" in the Piedmont application) to justify its being considered an applicant. This "catch-all clause" as contained in Pied. 's amended application states that Piedmont applies "for the authorization to engage in scheduled air transportation as an air carrier of passengers, mail and property, in local and feeder passenger service and mail, express and property pick-up service *on the routes detailed herein*, or such modification of *such* routes as the Board may find public convenience and necessity require." [Italics supplied.] We do not read this clause as requesting, in any sense, authority to operate on the routes ultimately awarded in this case. We do not agree with the Board and with Piedmont that (referring again to Map No. 1) the routes represented by the solid lines are a mere modification of the routes represented by the broken lines. Such a claim seems to us to be a distortion of reality and a totally unreasonable, capricious, and arbitrary interpretation of the word "modification." To be sure, the word "modification" normally connotes change or altering, but such change or altering must not be great and must not result in so transforming the original thing to be modified as to make of it something entirely new and different in substance. Volume VI of The Oxford English Dictionary (1933 Edition) defines "modification" as "the action of limiting, qualifying, or 'toning down' (a statement, etc.); a limitation, restriction, or qualification." In Linn v. Linn,[8] the Supreme Court of Alabama said: "Modify ordinarily is not used in a sense of completely setting aside the thing to be modified, but to limit,

[7] We here refer to the coincidence of the broken and solid lines between Roanoke, Virginia, and Lynchburg, Virginia, and between Richmond, Virginia, and Norfolk, Virginia.

[8] 242 Ala. 688, 8 So. (2d) 187, 188 (1942).

qualify or moderate." Further convincing proof of the fact that Piedmont was in no sense an applicant for the routes awarded and that Piedmont itself did not consider that its "catch-all clause" was sufficiently broad to cover the awarded routes is contained in the statement made by Piedmont's president when asked if he would be willing to serve Greensboro-High Point [9] if service to that point were authorized by the Board. His reply was as follows:

"Yes, sir. I would like to have it understood here, now, that any point not included on our proposed routes, *which are along our proposed routes, and which would not materially upset our plan of operation*, that the Civil Aeronautics Board saw fit for us to service, we would be delighted to serve it." [Italic supplied.] Piedmont having taken this position before the Board, it is not difficult to believe that Piedmont was the most surprised applicant of all when the Board announced its decision awarding Piedmont routes which are certainly not "along" Piedmont's "proposed routes" and routes which certainly do "materially upset" Piedmont's "plan of operation."

To be sure, the decision of what is or is not a modification of a given set of proposed routes is one which resolves itself in a fundamental question of fact and we recognize that it is not the function of this court to find fact or to substitute its judgment for that of the administrative tribunal on pure questions of fact concerning which opinions may reasonably differ. However, that is not this situation. We here rule, on the facts presented and uncontroverted, that no reasonable mind could conclude that the routes awarded in this case to Piedmont were merely a modification of the routes proposed by it. The implied finding by the Board that Piedmont was an applicant for the routes awarded lacks the support of any evidence, substantial or otherwise. In ruling thus, we have not said, and we do not wish to be understood as ruling, that the Board may not take advantage of a "catch-all clause" in an application by granting routes which represent slight deviations from those proposed. For example, referring for the moment to Map No. 2, if Piedmont had applied for the routes set forth by the broken lines, the Board might well have granted authorization to provide seasonal service between New Bern and Morehead City (indicated by arrow in lower right-hand corner of the map). Similarly, the addition of the two points indicated by circled stars (London-Corbin and Middlesboro-Harlan) on the route running between Bristol and Lexington-Frankfort would seem to be an appropriate "modification" of such proposed route.

[9] Note, on Map No. 1, the relatively short distance between Greensboro-High Point and the closest point on Piedmont's proposed route, namely, Winston-Salem.

II. Can the Board award a certificate to one who was not an applicant for the routes authorized by that certificate?

Although the determination of this second question requires our answer to a question not hitherto posed before any other court, so far as we are aware, yet we are not without ample guides, in the form of language of statute and of Commission-made rule and regulation, which point the way toward correct solution of the problem.

With regard to certificates of public convenience and necessity, the Act, after providing that no air carrier shall engage in any air transportation without a certificate,[10] states in Section 401 (b) that:

"Application for a certificate shall be made in writing to the Board [originally the Authority] and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require." [11]

In Section 401 (d) of the Act we find the following significant language with regard to issuance of certificates:

"(1) The Board shall issue a certificate *authorizing the whole or any part of the transportation covered by the application*, if it finds that *the applicant* is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this chapter [originally this Act] and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

"(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate *authorizing the whole or any part thereof* for such limited periods as may be required by the public convenience and necessity, if it finds that *the applicant* is fit, willing, and able properly to perform such transportation and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder." [12] [Italic supplied.]

An analysis of the above-quoted language of both subsections of Section 401 (d) reveals that, upon making the two requisite findings (as to fitness, willingness, and ability and as to public convenience and necessity), the Board either "shall," in the case of an application for a permanent certificate, or "may," in the case of an application for a temporary certificate,[13] issue a certificate to an *applicant* authorizing it to serve "the whole or any part" of the

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[10] The few exceptions to this general statutory edict are not here relevant.
[11] 52 Stat. 987 (1938), 49 U. S. C., § 481 (b) (1946).
[12] 52 Stat. 987 (1938), 49 U. S. C., § 481 (d) (1946).
[13] In both its original application and in the amendment thereto Piedmont sought a "permanent and/or temporary" certificate.

transportation covered by the application.[14] In line with our holding in the first part of this opinion, it might well be said that, since Piedmont was not in fact an applicant for the awarded routes, it does not come within the purview of the above-quoted portions of the Act (which obviously contemplate that the authorized transportation awarded be that for which one is an applicant) and that therefore any award by the Board in such circumstances is one made without sanction of Congress and in excess of its delegated powers. The Act, except for the negative inference to be drawn from the lack of express provision therefor, is silent as to the Board's power by delegation to issue a certificate to a non-applicant. Doubtless such action was never contemplated by the drafters of the Act. We think it clear that such unprecedented action is not, and cannot be, included within the familiar concept of the power of an administrative agency, having only delegated power, to "fill up the details." [15]

But there is another and more specific thing which renders the Board's action in this case invalid. As we have indicated above, when considering applications for a certificate, permanent or temporary, the Board must (1) find that the new routes are "required by the public convenience and necessity" and (2) find that the applicant is "fit, willing, and able" to perform such transportation. In this case the Board has found that public convenience and necessity require that air transportation be rendered along the routes shown by the solid lines on Maps 1 and 2. We have no quarrel with that finding. There is abundant and substantial evidence in the record to support it. However, the Board also found, using the precise terminology of the Act, that Piedmont was fit, willing and able to perform properly the air transportation found required, and to comply with the rules, regulations, and requirements of the Board. It is this latter finding which is not only unjustified on the basis of the record, but unjustifiable. In Braniff Airways, Inc. v. Civil Aeronautics Board,[16] this court said:

"The Act does not define 'fit, willing and able' but the Board has established these tests: (1) a proper organizational basis for the conduct of air transportation; (2) a plan for the conduct of the service made by competent personnel; (3) adequate financial resources."

That opinion went on to state that a finding by the Board, when made, was supported by substantial evidence of the fitness, willingness, and ability of the applicant in that case, but this court then reversed the Board because there was evidence of changed conditions since the Board made that finding which required a new

[14] The word "thereof" in subsection (2) obviously refers to the word "transportation" preceding it in that subsection.
[15] See vom Baur, Federal Administrative Law (1942), vol. 1, pp. 24–5, footnote 86.
[16] 79 U. S. App. D. C. 431, 342, 147 F. (2d) 152 (1945).

hearing so that present facts could be determined. In the instant case, we have presented the still stronger situation wherein, even at the time of the Board's finding that Piedmont was fit, willing, and able, there was no evidence of Piedmont's appropriate qualification for the awarded routes. We find the record before us barren of any evidence put in by Piedmont to show its fitness, willingness, or ability to operate west of the Appalachians or over mountainous terrain. In fact, Piedmont's evidence was to the contrary. Counsel for Piedmont in oral argument before the Board made the following significant statement with regard to the nonmountainous character of the terrain covered by Piedmont's passenger application (as shown on Map No. 1):

"Consider how this route as proposed by Piedmont connects Charlotte with its secondary centers, both north and south, and how north of Winston Salem it follows the Shennandoah [sic] Valley, crossing the Blue Ridge Mountains at only one point, the southernmost end of those mountains where they are very low."

Contrasting this emphasis by Piedmont on north-south routes which avoid mountainous terrain as much as possible with the routes actively sought by State running generally east-west over the Appalachians at approximately their highest and widest point, it is at once apparent that Piedmont made no attempt to qualify itself for the service of the area it was ultimately authorized to serve. This is further shown by the fact that Piedmont based all its evidence and exhibits on the performance of a single-engine, uncertificated plane, the Noorduyn Norseman V, whereas State proposed to use twin-engine planes. Respondent argues before this court that it makes no difference who puts in evidence concerning the proposed trans-Appalachian feeder service. This is undoubtedly true as to whether or not the routes are required by the public convenience and necessity for if the routes are so required it is immaterial which, if any, of the applicants demonstrates that this need exists. However, as applied to the requisite finding of fitness, willingness, and ability, it is very important indeed which of the applicants has put in evidence concerning the routes ultimately awarded. It is obvious from the record that State introduced abundant and convincing evidence, procured through exhaustive research, which indicated State's careful planning with a view to rendering service to the very area and the very routes and points which it proposed and which were ultimately awarded to Piedmont. The Board impliedly concedes that State has thus not only established the need but proven its fitness to serve those routes and points. The Board in two different opinions indicated that the choice between State and Piedmont "presented a close and difficult question." The Board, in its opinion of December 12, 1947, stated that it was "fully aware of the interest

State has shown in this matter and of the thoroughness with which it planned and prosecuted its application both in establishing convenience and necessity and in urging its selection as the carrier to operate local and feeder routes in the Southeastern States area." But it then discounted this by stating that Piedmont had also "energetically prosecuted" its application for routes in the same area and stated that: "Enthusiasm and interest cannot alone control the choice." We agree with this statement. What should control the choice (and what did not control it here) is the determination of which, if any,[17] has proven himself fit, willing, and able to adequately serve the routes which have been found to be required by the public convenience and necessity.

It does not follow, and we believe it cannot follow, that proof of fitness, willingness, and ability to operate along basically north-south routes, paralleling existent surface travel, and avoiding mountainous terrain is equivalent to proof of qualification to operate on basically east-west routes, generally at right angles to the major lines of flow of existing surface travel, and crossing large areas of a very mountainous region.[18] The absurdity of such a claim is demonstrated by the extreme position which counsel for the Board was compelled to take in oral argument before this court in defense of the action taken by the Board. When questioned from the bench in oral argument before us, counsel for respondent Board admitted that it was the Board's claim that if Piedmont had applied for a route from Hagerstown to Norfolk in a southeastern area proceeding, the Board could award Piedmont the Miami to Jacksonville route. In such a case, as in the case at issue, the sociological, economic and topographical factors are so variable as to render any attempt to use such factors as are introduced to support the granting of a particular route totally valueless in considering another and substantially different route.

Petitioner has cited numerous instances where the Board has, by rule, regulation, and decision in other prior cases, established a rigid policy of rejecting applications not in proper form and of denying the applications of those applicants who have not applied for the routes found necessary. Whether or not this is true, it is not, and cannot be, a determinative factor in this case. It is generally true that administrative agencies are free from the application of the judicial doctrines of stare decisis and res judicata as those doctrines may be advanced as to prior administrative determinations. Stated more simply, an administrative agency is not bound

[17] The last sentence of § 401 (d) (1) clearly shows that there need not be any successful applicant in a given proceeding.

[18] The area over which the Board authorized Piedmont to fly contains the two highest mountains east of the Mississippi, namely, Mount Mitchell (6,684 feet) in North Carolina and Clingman's Dome (6,643 feet) in Tennessee, both of which are higher than the perhaps more famous Mt. Washington (6,288 feet) in New Hampshire.

by its own prior determinations, though the courts may take those prior determinations into consideration.[19]

From the foregoing it is apparent that we answer both of the questions posed as the major issues in the case in the negative. We expressly rule that the Board's findings (except as to the finding that the routes were required by the public convenience and necessity) were, in the legal sense, arbitrary and capricious and lacked the support of substantial evidence. Accordingly, we must reverse the decisions of the Board insofar as they resulted in the granting of a certificate to intervenor herein, Piedmont. Petitioner, State, also asks that this court reverse and remand to the Board with instructions to issue a certificate to State. Whether or not it is so that the Board has already made the requisite findings which would entitle State to a certificate, we agree with respondent that this court lacks the power to order the issuance of a certificate which the Board has declined to issue. We do not read the allegedly pertinent section of the Administrative Procedure Act with its mandate that this court shall "compel agency action unlawfully withheld,"[20] as requiring that result. On the contrary we regard ourselves bound in this respect by the decision of the Supreme Court in Federal Communications Commission v. Pottsville Broadcasting Co.[21] The case is therefore

Reversed and remanded for further proceedings not inconsistent with this opinion.

EDGERTON, J., dissents.

United States Court of Appeals for the District of Columbia Circuit

No. 9748—April Term, 1949

STATE AIRLINES, INC., PETITIONER

vs.

CIVIL AERONAUTICS BOARD, RESPONDENT

PIEDMONT AVIATION, INC., INTERVENOR

On Petition for Review of Orders of the Civil Aeronautics Board

Before EDGERTON, CLARK, and PRETTYMAN, JJ.

United States Court of Appeals for the District of Columbia Circuit. Filed Apr. 6, 1949. Joseph W. Stewart, Clerk.

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[19] See vom Baur, Federal Administrative Law (1942), vol. 1, §§ 74, 183, and 255–9, and cases cited therein.

[20] Section 10 (e), 60 Stat. 243 (1946), 5 U. S. C. § 1009 (e) (1946).

[21] 309 U. S. 134, 60 Sup. Ct. 437, 84 L. Ed. 656 (1940).

Judgment and decree

This cause came on to be heard on the transcript of the record from the Civil Aeronautics Board, and was argued by counsel.

On consideration whereof, it is now here adjudged and decreed by this Court that the orders of the said Civil Aeronautics Board on review in this cause be, and the same are hereby, reversed, and that this cause be, and it is hereby, remanded to the said Civil Aeronautics Board for further proceedings not inconsistent with the opinion of this Court.

Per Circuit Judge CLARK.

Dated April 6, 1949.

Circuit Judge EDGERTON dissents.

In the United States Court of Appeals for the District of Columbia Circuit

No. 9748

STATE AIRLINES, INC., APPELLANT

vs.

CIVIL AERONAUTICS BOARD, APPELLEE

PIEDMONT AVIATION, INC., INTERVENOR

United States Court of Appeals for the District of Columbia Circuit. Filed Apr. 6, 1949. Joseph W. Stewart, Clerk.

Designation of record

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for a writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint Appendix.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

(S) Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General,
Counsel for Appellee.

Certificate of service

I hereby certify that I have this day served a copy of the Designation of Record on the following parties by mailing copies to them at their business addresses: Frederick W. P. Lorenzen, 100 Broadway, New York (5), N. Y. Philip Schleit, 1346 Conn. Ave. NW., Washington, D. C. Wilmer A. Hill, 238 Transportation Building, Washington, D. C. Robert B. Hankins, Ring Building, 1200 18th St. NW., Washington 6, D. C.

(S) Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

JUNE 3, 1949.

United States Court of Appeals for the District of Columbia Circuit

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, formerly United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered 1 to 688, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties and proceedings of the said Court of Appeals, as designated by counsel in the case of: State Air Lines, Inc., Appellant v. Civil Aeronautics Board, Appellee; Piedmont Aviation, Inc., Intervenor, No. 9748, April Term, 1949, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this eighth day of June, A. D. 1949.

[SEAL] (S) JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia Circuit.

In the Supreme Court of the United States

October Term, 1948

No. —

CIVIL AERONAUTICS BOARD, PETITIONER

vs.

STATE AIRLINES, INC., RESPONDENT

PIEDMONT AVIATION, INC., INTERVENOR

Stipulation

Subject to this court's approval, it is hereby stipulated and agreed, by and between counsel for the respective parties hereto,

that for the purpose of the petition for writ of certiorari and any cross-petition for such writ, the printed record may consist of the following:

1. Joint Appendix.

2. The proceedings had before the United States Court of Appeals for the District of Columbia Circuit as set forth in the Designation of Record filed by the Petitioner.

It is further stipulated and agreed that petitioner will cause the Clerk of the United States Court of Appeals for the District of Columbia Circuit to certify and file with the Clerk of the Supreme Court of the United States the entire transcript of record on appeal in the United States Court of Appeals for the District of Columbia Circuit; and that in the event any petition for writ of certiorari herein is granted, the printed record shall consist of the proceedings in the court below and such portions of the complete transcript of record on appeal in that court as the parties may designate.

It is further stipulated and agreed that either of the parties hereto may refer in his brief to the record filed in the Supreme Court of the United States, including any part thereof which has not been printed.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General,
Counsel for Petitioner.

Frederick W. P. Lorenzen,
FREDERICK W. P. LORENZEN,
Counsel for Respondent.

Charles H. Murchison,
CHARLES H. MURCHISON,
Counsel for Intervenor,
Piedmont Aviation, Inc.

Dated June 10, 1949.

U. S. GOVERNMENT PRINTING OFFICE: 1949

Supreme Court of the United States

No. 157, October Term, 1949

Order allowing certiorari

Filed October 10, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 158, October Term, 1949

Order allowing certiorari

Filed October 10, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 159, October Term, 1949

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No. 157

In the Supreme Court of the United States

OCTOBER TERM, 1949

CIVIL AERONAUTICS BOARD, PETITIONER

v.

STATE AIRLINES, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 157

CIVIL AERONAUTICS BOARD, PETITIONER

v.

STATE AIRLINES, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General on behalf of the Civil Aeronautics Board respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on April 6, 1949.

OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 675–686) is not yet reported. The original opinion of the Civil Aeronautics Board is reported in 7 C. A. B. 863 (R. 565). The Board's supplemental opinions are reported in 8 C. A. B. 585 and 716 (R. 568–588, 610–621).

JURISDICTION

The judgment of the Court of Appeals was entered on April 6, 1949 (R. 686–687). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1).

QUESTIONS PRESENTED

1. Whether, in selecting an applicant who is "fit, willing, and able" to operate an air route found required by public convenience and necessity, the Civil Aeronautics Board must, as a matter of law, consider as ineligible for award of the route all applicants whose proposed operating plans do not specifically cover every portion of the route actually awarded.

2. Whether the Civil Aeronautics Board is precluded under section 401 (d) of the Civil Aeronautics Act from awarding an air route to an applicant which has not specifically requested what the reviewing court characterizes as a "substantial" portion of the route actually awarded but has included in its application a so-called "catch-all" clause, customarily included in new route applications, which requests the routes detailed in the application "or such modification of such routes as the Board may find public convenience and necessity require."

3. Whether the Court of Appeals erred in undertaking to decide for itself what is technically necessary by way of plans and organization to render an applicant "fit" and "able" to oper-

ate an air route, and in holding that there was no substantial evidence to support the Board's finding that Piedmont was "fit, willing, and able" within the meaning of section 401 (d) of the Civil Aeronautics Act.

STATUTE INVOLVED

The pertinent provisions of the Civil Aeronautics Act of 1938, as amended,[1] which will be referred to as the Act, are set forth in Appendix A, *infra,* pp. 21–22.

STATEMENT

On February 24, 1945, the Civil Aeronautics Board (hereinafter called the "Board") consolidated for hearing in a single proceeding known as the "Southeastern States Case" some 45 applications by 25 companies proposing new and additional air transportation services. The applications included proposals for "trunkline" service and local or "feeder" service,[2] and embraced an area extending roughly from Maryland to Florida, and from the Atlantic Coast to the Mississippi River (R. 565 (866)).[3] The pro-

[1] Act of June 23, 1938, c. 601, 52 Stat. 977, as amended, 49 U. S. C. 401, *et seq.*

[2] A local or "feeder" air route, in contrast to a trunkline route, is in general a route primarily serving small communities and tying them into the larger traffic centers with which they have their major community of interest. The service is normally rendered with small equipment and is primarily short haul in character.

[3] The area included the States of Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina,

ceeding resulted from the practice of the Board in consolidating into one proceeding all route applications proposing service within a well-defined geographical area, and was one of eleven so-called "area proceedings" held before the Board.

Various applicants for local or "feeder" service proposed routes which overlapped and duplicated each other in many respects, and when taken together blanketed the area involved (R. 638–654). Among these applicants were State Airlines, Inc. (hereinafter called "State") and Piedmont Aviation, Inc. (hereinafter called "Piedmont").

Piedmont's application, as amended, sought a total of 5,763 miles of specifically described routes (R. 28–71, 652, 653). Of these routes, 1,404 miles consisted of a conventional passenger, property, and mail operation over a north-south route extending from Washington, D. C., to Columbia, S. C., and east-west routes extending from Knoxville, Tenn., to Wilmington, N. C., and from Roanoke, Va., to Norfolk, Va. (R. 69–70, 652; see Map, Appendix B, *infra*, p. 23). The remaining 4,359 route miles proposed by Piedmont in the same general area consisted of a property-mail pick-up[4] operation over an ex-

Georgia, Alabama, Mississippi; portions of Ohio, Indiana, Maryland, Florida, and Missouri; and the District of Columbia.

[4] Property "pick-up" service involves the use of aircraft equipped with a device for enplaning or deplaning property at a station without landing the aircraft.

tensive net work of routes serving a larger area than its proposed passenger routes (R. 64–69, 653; see Map, Appendix B, *infra,* p. 23).

Piedmont's application included a so-called "catch-all" clause requesting authorization to engage in air transportation "on the routes detailed herein, or such modification of such routes as the Board may find public convenience and necessity require"; and the general prayer in the application asked "for such other and further relief, general and specific, under Section 401 of the * * * Act * * *, as the Board may deem appropriate, and to which the applicant may be entitled in any proceeding in which the application may be heard in part or in its entirety" (R. 31, 41).[5]

State's applications proposed twelve routes providing conventional passenger, property, and mail service to approximately fifty-five points over a network of routes blanketing much of the "southeastern" area, and reaching out as far as Richmond, Va., Jacksonville, Fla., Montgomery, Ala., Chattanooga, Tenn., Louisville, Ky., and Cincinnati, Ohio (R. 1–27, 654; see Map, Appendix B, *infra,* p. 23).[6]

[5] An amendment to Piedmont's original application eliminated certain proposals involving passenger service, but did not affect the remainder of its original proposal, including the "catch-all" clause (R. 62–71).

[6] On brief to the Examiners, and later to the Board, State indicated that it would seek consideration of only nine of its proposed twelve routes, thereby reducing from fifty-five to forty-four, the number of points it specifically proposed to

An extensive hearing on all the applications in the proceeding was held before the Examiners in May and June of 1945 (R. 629 (6), 837). Evidence was introduced by the various local or "feeder" applicants to support the need for the local or "feeder" routes they proposed, and to show their individual qualifications for operating their routes, including evidence with respect to the previous aviation experience of the applicant and its officials, their available equipment and personnel, their financial resources, and their plans for operating the routes they proposed.

On June 4, 1946, the Examiners issued their report recommending, *inter alia,* that the area be afforded four separate local or "feeder" routes, one of which was to go to State, and one to Piedmont (R. 519–522). Piedmont's recommended route consisted of a north-south segment between Washington, D. C., and Winston-Salem, N. C., and an east-west segment between Norfolk, Va., and Roanoke, Va. (R. 520). State's recommended route connected with that of Piedmont at Winston-Salem, N. C., but was in general a more southern route, consisting of north-south segments from Winston-Salem and Raleigh-Durham, N. C., to Columbia, S. C., and east-west segments from Morehead City and Wilmington, N. C., to Asheville, N. C., and Louisville, Ky. (R. 521–522).

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serve, and reducing somewhat the general area covered by its proposed network of routes (see Map, Appendix B, *infra,* p. 23).

On exceptions to the Examiners' report Piedmont objected, *inter alia,* to certain routes recommended for State (R. 533, 534). State contended, *inter alia,* that the Examiners "erred in granting to other applicants and failing to grant to State certain authority, which, although not specifically sought by State, would, if granted to State rather than other applicants, form a more logical part of the operating authority recommended by the Examiners for State" (R. 529).

Following briefs and oral argument before the Board, the Board issued its decision, in which it determined, *inter alia,* that certain cities and regions required "trunk-line" services, and made appropriate amendments in the certificates of public convenience and necessity held by five "trunk-line" carriers. In addition, the Board found a need for two local or "feeder" routes (rather than four recommended by the Examiners), one in the "southern area" which was awarded to Southern Airways, Inc., and another in the northern area.

In selecting a carrier to operate the route in the northern area, the Board considered the qualifications of all the applicants (eleven in number) who had proposed service to any part of the route actually awarded. (See Map, Appendix B, *infra,* p. 23.) The Board then narrowed its choice down to State and Piedmont, and after recognizing that the choice between these two applicants presented "a close and diffi-

cult question," the Board concluded that Piedmont was best qualified to operate the route and was "fit, willing, and able" within the meaning of section 401 (d) of the Act (R. 565 (901–902, 907)). The choice of Piedmont over State essentially turned on the conclusion that Piedmont had superior operational experience, and possessed a well-rounded organization with key personnel familiar with the area involved who could inaugurate certificated operations sooner than State (R. 565 (902)).

Piedmont's route, consisting of 1700 odd route miles, centered in the Carolinas and Virginias, and extended west of the Appalachians as far as Louisville, Ky., and Cincinnati, Ohio. (See Map, Appendix B, *infra,* p. 23.) The route was in some respects a consolidation of the two separate routes recommended by the Examiners for State and Piedmont, although somewhat less extensive in total route mileage and area served. Of the 26 points originally included in Piedmont's certificate, 9 had been specifically named in its proposed passenger operation and all but 6 had been specifically named in its pick-up proposal (R. 64–70; see Map, Appendix B, *infra,* p. 23.) The extensive routes proposed by State had included 24 of the 26 points awarded to Piedmont (R. 1–27; see Map, Appendix B, *infra,* p. 23).

On petition for rehearing, reargument, and reconsideration, State urged, *inter alia,* that the award to Piedmont was unlawful in that (a) Piedmont had not applied for the major portion

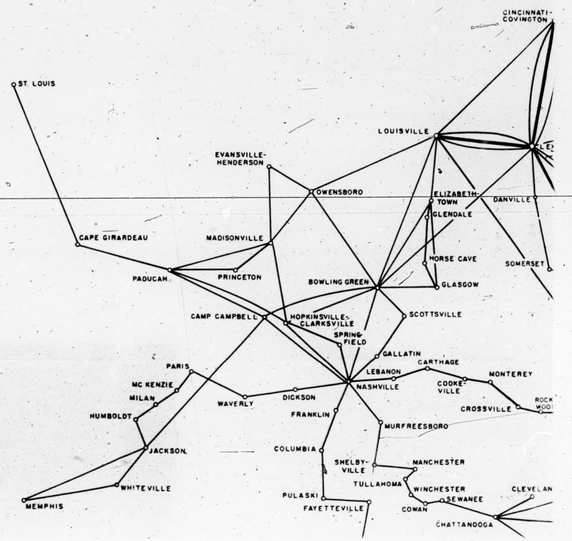
of the route, either specifically or by means of the general allegations in its application, and that therefore the award was beyond the Board's jurisdiction and denied State adequate notice and hearing, and (b) the Board's finding of "fitness, willingness, and ability" lacked the support of substantial evidence (R. 566). The Board then heard reargument limited to the questions of "(a) whether the public interest requires the selection of State or Piedmont, and (b) whether the Board committed legal error by awarding the route to Piedmont" (R. 591).

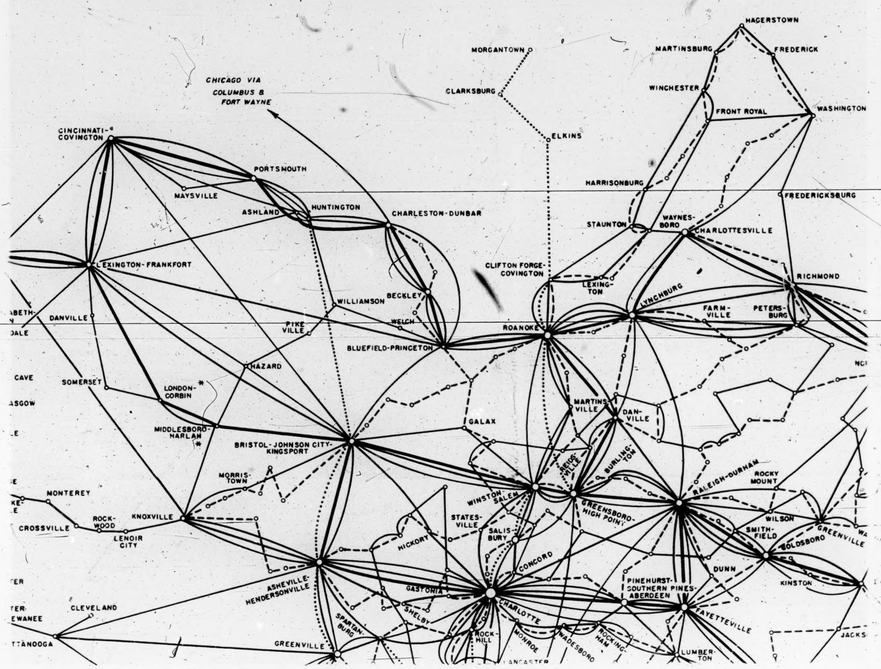
On December 12, 1947, the Board issued a supplemental opinion reaffirming its award to Piedmont, and issued to Piedmont a temporary certificate for the route (R. 610–628). The Board found, *inter alia,* that Piedmont was clearly fit, willing, and able, that State had been afforded adequate notice and a fair hearing, and that in the light of Piedmont's "catch-all" clause and the customary practice in route cases before the Board, Piedmont was an "applicant" for the route awarded it (R. 611–619). On the relative merits of the two applicants, the Board found that Piedmont had more diversified experience in aviation activities, that Piedmont was superior in repair and overhaul facilities and in maintenance personnel, and that Piedmont had the nucleus of a well-rounded organization that would permit earlier inauguration of service than would State's skeleton organization (R. 611, 612).

COMPARISON BETWEEN RO
OF 11 APPLICANTS (

VEEN ROUTE AWARDED BY BOARD AND PROPOSED ROUTES
CANTS CONSIDERED FOR AWARD OF BOARD'S ROUTE

PROPOSED ROUTES
ARD'S ROUTE





KEY

- ROUTES AWARDED TO PIEDMONT AVIATION, INC.
- PIEDMONT: CONVENTIONAL ROUTES PROPOSED BY PIEDMONT AVIATION, INC.
- PIEDMONT: PICKUP ROUTES PROPOSED BY PIEDMONT AVIATION, INC.
- STATE: ROUTE PROPOSALS ACTIVELY PROSECUTED BY STATE AIRLINES, INC.
- STATE: ROUTE PROPOSALS NOT PRESSED BY STATE AIRLINES, INC.
- STATE: ROUTE PROPOSALS IN EFFECT ABANDONED BY STATE AIRLINES, INC.
- COMPOSITE ROUTES PROPOSED BY THE 9 OTHER CARRIERS (SEE NOTE)
- * BOARD AWARDED THESE POINTS 10-13-47

NOTE: FOR INDIVIDUAL ROUTE PROPOSALS OF THESE APPLICANTS SEE ORIGINAL TRANSCRIPT OF RECORD AS FOLLOWS:

- ATLANTIC AND CAROLINA AIRWAYS COMPANY (TR. 138-148)
- BLUEGRASS AIRLINES (TR. 584-595)
- COMMONWEALTH AIR TRANSPORT, INC. (TR. 149-171)
- GILLESPIE AIRWAYS (TR. 103-116)
- SEABOARD AIR TRANSPORT (TR. 80-95)
- SOUTH EAST AIRLINES (TR. 478-493)
- SOUTH EAST AIRLINES, INC. (TR. 272-289)
- VIRGINIA AIRWAYS (TR. 417-426)
- VIRGINIA CENTRAL AIRLINES (TR. 503-509 B.B.)

CIVIL AERONAUTICS BOARD

On appeal, the court below held (Judge Edgerton dissenting without opinion) that the Board's award to Piedmont was legally defective in that (1) the Board had exceeded its jurisdiction by making the award to a party who was not in fact "an applicant" for the route within the meaning of section 401 (d) (2) of the Act, and (2) there was no substantial evidence to support the Board's finding that Piedmont was "fit, willing, and able" to operate the route within the meaning of the above-mentioned section of the Act (R. 675–686). While reversing "the decisions of the Board insofar as they resulted in the granting of a certificate" to Piedmont, the court held that it lacked the power to order the Board to issue a certificate to State, and remanded the case for further proceedings not inconsistent with its opinion.

SPECIFICATION OF ERRORS TO BE URGED

The court of appeals erred:

(1) In holding that Piedmont was not an "applicant" for the route awarded to it within the meaning of section 401 (d) of the Civil Aeronautics Act;

(2) In holding that there was no substantial evidence to support the Board's finding that Piedmont was "fit, willing, and able" within the meaning of section 401 (d) of the Civil Aeronautics Act;

(3) In holding that as a matter of law an applicant cannot be found "fit" and "able" to operate an air route unless the applicant has come forward with plans showing how it proposes to operate over each portion of the route actually awarded;

(4) In undertaking to decide for itself what is technically necessary by way of plans and organization to render an applicant "fit" and "able" to operate the route awarded to Piedmont;

(5) In reversing the decision of the Board awarding the route to Piedmont.

REASONS FOR GRANTING THE WRIT

This case raises questions of considerable importance in the administration of the Civil Aeronautics Act. The majority below has made an unduly restrictive interpretation of the terms "fitness," "ability," and "applicant," as used in section 401 (d) of the Act, and has seriously and unjustifiedly limited the field of choice entrusted by Congress to the Board in selecting an applicant best qualified to operate an air route found to be required by public convenience and necessity.

The court below upset the Board's finding of fitness, willingness, and ability of Piedmont on the asserted ground that substantial evidence was lacking to support the finding. But the essential basis for the invalidation of this determi-

nation is to be found in the court below's erroneous interpretation of the terms "fitness" and "ability." The majority held in effect that under the Act an applicant cannot be found "fit" and "able" to operate an air route unless the applicant has come forward with plans showing how it actually proposes to operate *over each portion* of the route actually awarded; the court below found in the statute an implicit provision that it is not enough that the applicant has submitted plans for operating over part of the route awarded. This limitation, if allowed to stand, will seriously hamper the Board in the promotion and development of a sound air route pattern, particularly in the realm of local or "feeder" routes.

Both the actual inauguration of service and the successful development of a given local or "feeder" route may be directly affected by the particular applicant chosen to operate the route. Moreover, the route may often include segments that were not proposed by an applicant; or the route may be one combining the separate proposals of several applicants, the Board having found that the public convenience and necessity requires their operation as a single system. Under the view of the statute taken by the court below, such a route system apparently could not be awarded to *any* of the applicants.

On the basis of its experience in dealing with the problem, the Board has established the prac-

tice in new route cases to determine first what service is required by public convenience and necessity, and then to decide which applicant is best qualified to perform such service. In this way, the public interest in an adequate air transportation system is given primacy. The effect of the holding below, however, is to compel the Board to make its determination within the rigid limits fixed by the particular plans presented by individual applicants. Only if the best qualified applicant happens to have made substantially the same appraisal of the public's need for transportation service as that ultimately made by the Board could a certificate be awarded to such applicant.

Such a limitation would seriously impair the Board's ability to establish and develop an air transportation system adequate to meet the needs of the public, and it is inconceivable that Congress could have intended to confine the Board within such a procedural strait-jacket. The extent to which the Board's certifications would serve the public interest would depend upon the foresight and diligence shown by individual applicants in elaborating the details of their operating plans for submission to the Board. Theoretically this objection might be met by conducting further proceedings to afford the applicants opportunity to make and present additional plans; but, as a practical matter, the necessity of thus prolonging what are already lengthy, time-consuming

procedures[7] would substantially impair the Board's ability to effectuate the purpose of the Act to establish an adequate air transportation system for the United States.

Apart from its erroneous interpretation of "fitness" and "ability", the majority below seriously invaded the province of administrative judgment. The determination of what constitute the technical essentials of organization and planning necessary to the operation of air transport services over the route awarded to Piedmont is a matter which plainly falls within the domain of the Board.

The Board has normally required an appropriate showing as to the adequacy of financial resources, proper organization, and plans for the conduct of the service by competent personnel to establish an applicant's qualifications. But the Board has recognized, from its familiarity with air transportation problems, that an applicant who has the necessary fitness and ability to operate a local feeder air route of a given mileage is equally capable of operating another route of similar mileage, even though the route may extend in different directions and serve communities not originally contemplated in the applicant's

[7] Proceedings involving local feeder service have proved especially time consuming, since they involve service in wide areas, and frequently have required several years for completion even under existing procedures.

plans.[8] This approach accords with the realities of new route developments,[9] and is virtually necessary since no one can be certain what the opportunities for local feeder service are or what route pattern a local feeder operation should assume. These are practical factors in the administration of the Act which the Board was properly entitled to consider in formulating its procedures, and the decision below thus represents an unwarranted intrusion upon the Board's administrative authority.

The Board in this proceeding, having carefully examined the plans and organization of Piedmont, set forth in its supplemental opinion awarding Piedmont the certificate, detailed factual findings

[8] Thus, if an applicant has sufficient financing to enable him to undertake local feeder service over a route consisting of approximately one thousand route-miles, the particular direction of route mileage and the particular communities to be served do not affect the financial ability of the applicant. Similarly, if an applicant has a nucleus of pilots, mechanics, equipment, and key personnel to operate a proposed local feeder route of one thousand miles and has presented plans showing how he will operate over those route-miles, the Board can judge the applicant's capability of operating another local feeder route of approximately the same size, regardless of the details as to particular communities to be served, or the sequence in which the communities are to be served.

[9] Although obviously not in the record in this case, the fact that Piedmont started operations with commendable promptness and has successfully continued them since is a practical demonstration of the fact that this approach to fitness and ability is consistent with the realities of air transportation.

on which its conclusion that Piedmont was qualified to operate the route was predicated (R. 611, 613, 614).[10] Despite this, the court below, without challenging the Board's basic findings of fact, apparently decided that Piedmont should have produced evidence to show that it had plans "to operate west of the Appalachians or over mountainous terrain" (R. 684). The court asserted "that proof of fitness, willingness, and ability to operate along basically north-south routes parallelling existent surface travel, and avoiding mountainous terrain" is not "equivalent to proof of qualification to operate on basically east-west routes, generally at right angles to the major lines of flow of existing surface travel, and crossing large areas of a very mountainous region" (R. 685). The court below has thus undertaken itself to make technical judgments which Congress has clearly entrusted to the Board. The impact of mountainous terrain, or of the direction of air routes or surface travel, upon the capability of an applicant to operate an air route, is a matter which Congress has left to the Board and not to the courts. In attempting itself to judge these factors, the court below has in our opinion

[10] Indeed, State conceded before the Board that Piedmont was fit and able. At the oral argument on reconsideration, State's attorney stated: "We are taking the position that both State and Piedmont are fit and able, it's a question of which has demonstrated in this record to be more fit, willing, and able" (607).

seriously invaded the domain of administrative action.

The court below also held that Piedmont was not an "applicant" within the meaning of section 401 (d) for the route awarded and that the Board therefore was without power to grant the route to Piedmont. In so holding, the court ruled that the route awarded to Piedmont was more than a "modification" of the route Piedmont proposed and that the "catch-all" clause included in Piedmont's application could not justify an award which represented more than "slight deviations" from the route proposed in its application. While this might superficially appear to be a question which turns on the wording of Piedmont's application, it raises, in fact, a question of importance in the administration of the Act since it imposes an unwarranted jurisdictional limitation upon the Board.

It has been a uniform practice of applicants in new route proceedings before the Board to include in their applications so-called "catch-all" clauses similar to that contained in Piedmont's application. By the inclusion of a "catch-all" clause the Board and the parties are put on notice that the scope of a particular application is not limited to the specific points or route segments named in the application, but is broad enough to embrace any award that the Board may wish to make in the general area embraced by the appli-

cation (R. 616, 617). This practice arises from the fact that in a new route proceeding the number of points in the area that may be selected for air transportation, and the variations in the manner in which they may be joined in a linear route, are so numerous that the applicants do not wish and should not be required to confine their requests to the precise routing which they may have specifically proposed.

While the precise phrasing of the "catch-all" clause has varied with the applicants, the employment of the clause has been virtually universal, and the Board has commonly relied upon the clause in the awarding of routes (R. 617). As a consequence, there are now in process numerous new route proceedings before the Board in which the "catch-all" clause is an integral part of the competing applications. If the court's treatment of Piedmont's "catch-all" clause is allowed to stand, it will cast a cloud upon these existing proceedings because of uncertainty as to the scope of the applications. It is true that the court below has not outlawed the "catch-all" clause as such, and has indicated that the clause may be used to permit the granting of routes "which represent *slight deviations* from those proposed" (R. 681). [Italics supplied.] However, the Board may find itself in a difficult position, for if it construes a catch-all clause narrowly to exclude an applicant from selection for a

route, it may find its action challenged by the applicant; whereas if it construes the catch-all clause broadly, it may find its action challenged under the court's decision by another applicant.[11] It is difficult to believe that Congress intended to import into new route proceedings technicalities of pleading, reminiscent of Baron Parke's day, such as are inherent in the decision of the court below.

The court below also erred in holding that there was "no evidence" to support "the implied finding" by the Board that Piedmont was an applicant for the routes awarded (R. 681). The detailed basis for the Board's finding is amply set forth in the Board's second supplemental opinion on reconsideration (R. 615–616).[12]

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[11] As in the case of failure of an applicant to adduce plans for operating all of the route to be awarded, the Board could of course undertake further proceedings in pending cases to require clarification of the applications and hold further hearings; but as we have indicated, such additional steps would unduly delay the already time-consuming route proceedings, and thereby hamper the Board's work.

[12] With respect to State and Piedmont, it is noteworthy here that the Board expressly found that State had been afforded adequate notice and hearing (R. 619), and this finding has not been questioned by the court below. Accordingly, it seems clear that State was afforded all procedural safeguards required by due process.

CONCLUSION

It is respectfully submitted that this petition for certiorari should be granted.

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JULY 1949.

APPENDIX A

The pertinent provisions of the Civil Aeronautics Act of 1938, as amended,[1] are as follows:

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

CERTIFICATE REQUIRED

SEC. 401 (a). No air carrier shall engage in any air transportation unless there is in force a certificate issued by the [Board] authorizing such air carrier to engage in such transportation: * * *

APPLICATION FOR CERTIFICATE

(b) Application for a certificate shall be made in writing to the [Board] and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the [Board] shall by regulation require.

NOTICE OF APPLICATION

(c) Upon the filing of any such application, the [Board] shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the [Board] and to such other persons as the [Board] may by regulation determine. Any interested person may file with the [Board] a protest or memorandum of opposition to or in support of the

[1] Act of June 23, 1938, c. 601, 52 Stat. 973; Reorg. Plan No. IV, Sec. 7, effective June 30, 1940, 5 F. R. 2421, 54 Stat. 1235, 49 U. S. C. 401, et seq.

issuance of a certificate. Such application shall be set for public hearing, and the [Board] shall dispose of such application as speedily as possible.

ISSUANCE OF CERTIFICATE

(d) (1) The [Board] shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the [Board] hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the [Board] may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the [Board] hereunder.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 157

CIVIL AERONAUTICS BOARD, PETITIONER

v.

STATE AIRLINES, INC.

No. 158

STATE AIRLINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD AND PIEDMONT AVIATION, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE CIVIL AERONAUTICS BOARD

OPINIONS BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 675–686) is reported in 174 F. 2d 510. The original opinion of the Civil Aeronautics Board (R. 565) is reported in 7 C. A. B. 863. The Board's supple-

mental opinions (R. 568–588, 610–621) are reported in 8 C. A. B. 585 and 716.

JURISDICTION

The judgment of the Court of Appeals was entered on April 6, 1949 (R. 686–687). The petition for a writ of certiorari in No. 157 was filed by the Civil Aeronautics Board on July 1, 1949, and was granted on October 10, 1949.[1] The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1).

QUESTIONS PRESENTED

1. Whether, in an "area proceeding" held by the Civil Aeronautics Board for the dual purpose of (a) establishing such air routes in the area as are required by public convenience and necessity, and (b) selecting the best qualified applicant to operate those routes, the Board is precluded as a matter of law from awarding such routes to a qualified applicant who has not specifically applied for the routes established by the Board but has applied for routes in the same general area subject to "such modification of such routes as the Board may find public convenience and necessity require."

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[1] A petition for a writ of certiorari filed by Piedmont Aviation, Inc., Intervenor (No. 159), and a cross-petition filed by State Airlines, Inc., petitioner below (No. 158), filed on July 2, 1949, also were granted on October 10, 1949.

2. Whether the determination of the Civil Aeronautics Board that Piedmont Aviation, Inc., is "fit, willing, and able" to operate the air routes awarded it may be set aside as "unsupported by substantial evidence" because, in the independent judgment of the Court of Appeals, Piedmont's proposed organization and operational plans do not render it "fit" and "able" to operate the routes established by the Board.

3. Whether, where a Court of Appeals finds unlawful an order of the Civil Aeronautics Board awarding certain air routes to one applicant, the court is authorized by the Administrative Procedure Act to direct the Board to award these routes to another applicant.

STATUTES INVOLVED

The pertinent provisions of the Civil Aeronautics Act of 1938, 52 Stat. 973, as amended, 49 U. S. C. 401, *et seq.*, and the Administrative Procedure Act, 60 Stat. 237, 5 U. S. C. 1001, *et seq.*, are set forth in Appendix A, *infra*, pp. 61 to 63.

STATEMENT

On February 24, 1945, the Civil Aeronautics Board (hereinafter called the "Board") consolidated for hearing in a single proceeding known as the "Southeastern States Case" some 45 applications by 25 companies proposing new and additional air transportation services. The applications included proposals for "trunkline" serv-

ices and local or "feeder"[2] services, and embraced an area[3] extending roughly from Maryland to Florida, and from the Atlantic Coast to the Mississipi River (R. 565 (866)[4]). The proceeding resulted from the practice of the Board of consolidating into one proceeding all route applications proposing service within a particular geographical area, and was one of eleven so-called "area proceedings" held before the Board.[5]

Various applicants for local or "feeder" service proposed routes which overlapped and duplicated each other in many respects, and when taken together blanketed the area involved (R. 638–654; see Map, Appendix B, *infra,* p. 64). Among these applicants were State Airlines, Inc. (hereinafter called "State") and Piedmont Aviation, Inc. (hereinafter called "Piedmont").

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[2] A local or "feeder" air route, in contrast to a trunkline route, is in general a route primarily serving small communities and tying them into the larger traffic centers with which they have their major community of interest. The service is normally rendered with small equipment and is primarily short haul in character.

[3] The area included the States of Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi; portions of Ohio, Indiana, Maryland, Florida, and Missouri, and the District of Columbia.

[4] Since many pages of the record bear the same number, individual pages cited will be further identified by placing the page number of the particular document in parenthesis following the record citation.

[5] *Annual Report of The Civil Aeronautics Board*, 1943, pp. 9–10.

Piedmont's application, as amended, sought a total of 5,763 miles of specifically described routes (R. 28–71, 652, 653). Of these routes, 1,404 miles consisted of a conventional passenger, property, and mail operation over a north-south route extending from Washington, D. C., to Columbia, S. C.; and east-west routes extending from Knoxville, Tenn., to Wilmington, N. C., and from Roanoke, Va., to Norfolk, Va. (R. 69–70, 652; see Map, Appendix B, *infra,* p. 64). The remaining 4,359 route miles proposed by Piedmont in the same general area consisted of a property-mail pick-up[6] operation over an extensive network of routes serving a larger area than its proposed passenger routes (R. 64–69, 653; see Map, Appendix B, *infra,* p. 64).

Piedmont's application included a so-called "catch-all" clause requesting authorization to engage in air transportation "on the routes detailed herein, or such modification of such routes as the Board may find public convenience and necessity require"; and the general prayer in the application asked "for such other and further relief, general and specific, under Section 401 of the * * * Act * * *, as the Board may deem appropriate, and to which the applicant may be entitled in any proceeding in which the

[6] Property "pick-up" service involves the use of aircraft equipped with a device for enplaning or deplaning property at a station without landing the aircraft.

application may be heard in part or in its entirety" (R. 31, 41).[7]

State's applications proposed twelve routes providing conventional passenger, property, and mail service to approximately fifty-five points over a network of routes blanketing much of the "southeastern" area, and reaching out as far as Richmond, Va., Jacksonville, Fla., Montgomery, Ala., Chattanooga, Tenn., Louisville, Ky., and Cincinnati, Ohio (R. 1–27, 654; see Map, Appendix B, *infra*, p. 64).[8]

An extensive hearing on all the applications in the proceeding was held before the Examiners in May and June of 1945 (R. 629 (6), 637). Evidence was introduced by the various local or "feeder" applicants to support the need for the local or "feeder" routes they proposed, and to show their individual qualifications for operating their routes, including evidence with respect to the previous aviation experience of the applicant and its officials, their available equipment and personnel, their financial resources, and their

[7] An amendment to Piedmont's original application eliminated certain proposals involving passenger service, but did not affect the remainder of its original proposal, including the "catch-all" clause (R. 62–71).

[8] On brief to the Examiners, and later to the Board, State indicated that it would seek consideration of only nine of its proposed twelve routes, thereby reducing from fifty-five to forty-four, the number of points it specifically proposed to serve, and reducing somewhat the general area covered by its proposed network or routes (see Map, Appendix B, *infra*, p. 64).

plans for operating the routes they proposed. In addition, exhibits, and in some instances oral testimony, were received from some forty interested cities and municipal organizations regarding the needs of particular localities for air transportation services.

On June 4, 1946, the Examiners issued their report recommending, *inter alia,* that the area be afforded four separate local or "feeder" routes, one of which was to go to State, and one to Piedmont (R. 519–522). Piedmont's recommended route consisted of a north-south segment between Washington, D. C., and Winston-Salem, N. C., and an east-west segment between Norfolk, Va., and Roanoke, Va. (R. 520). State's recommended route connected with that of Piedmont at Winston-Salem, N. C., but was in general a more southern route, consisting of north-south segments from Winston-Salem and Raleigh-Durham, N. C., to Columbia, S. C., and east-west segments from Morehead City and Wilmington, N. C., to Asheville, N. C., and Louisville, Ky. (R. 521–522).

On exceptions to the Examiners' report Piedmont objected, *inter alia,* to certain routes recommended for State (R. 533, 534). State contended, *inter alia,* that the Examiners "erred in granting to other applicants and failing to grant to State certain authority, which, although not specifically sought by State, would, if granted to State rather than other applicants, form a more

logical part of the operating authority recommended by the Examiners for State" (R. 529).

Following briefs and oral argument before the Board, the Board issued a decision, in which it determined, *inter alia,* that certain cities and regions required "trunk-line" services, and made appropriate amendments in the certificates of public convenience and necessity held by five "trunk-line" carriers. In addition, the Board found a need for two local or "feeder" routes (rather than the four recommended by the Examiners), one in the "southern area" which was awarded to Southern Airways, Inc., and another in the northern area. (R. 565.)

In selecting a carrier to operate the route in the northern area, the Board considered the qualifications of all the applicants (eleven in number) who had proposed service to any part of the route actually awarded. (See Map, Appendix B, *infra,* p. 64). It then narrowed its choice down to State and Piedmont, and after recognizing that the choice between these two applicants presented "a close and difficult question," the Board concluded that Piedmont was best qualified to operate the route and was "fit, willing, and able" within the meaning of section 401 (d) of the Civil Aeronautics Act (R. 565 (901–902, 907)). The choice of Piedmont over State essentially turned on the conclusion that Piedmont had superior operational experience, and possessed a well-rounded organization with key personnel familiar with the

area involved who could inaugurate certificated operations sooner than State (R. 565 (902)).

Piedmont's route, consisting of 1700 odd route miles, centered in the Carolinas and Virginias, and extended west of the Appalachians as far as Louisville, Ky., and Cincinnati, Ohio. (See Map, Appendix B, *infra,* p. 64.) The route was in some respects a consolidation of the two separate routes recommended by the Examiners for State and Piedmont, although somewhat less extensive in total route mileage and area served. Of the 26 points originally included in Piedmont's certificate, 9 had been specifically named in its proposed passenger operation and all but 6 had been specifically named in its pick-up proposal (R. 64–70; see Map, Appendix B, *infra,* p. 64). The extensive routes proposed by State had included 24 of the 26 points awarded to Piedmont (R. 1–27; see Map, Appendix B, *infra,* p. 64).

On petition for rehearing, reargument, and reconsideration, State urged, *inter alia,* that the award to Piedmont was unlawful in that (a) Piedmont had not applied for the major portion of the route, either specifically or by means of the general allegations in its application, and that therefore the award was beyond the Board's jurisdiction and denied State adequate notice and hearing, and (b) the Board's finding of "fitness, willingness, and ability" lacked the support of substantial evidence (R. 566). The Board then heard reargument limited to the questions of

"(a) whether the public interest requires the selection of State or Piedmont, and (b) whether the Board committed legal error by awarding the route to Piedmont" (R. 591).

On December 12, 1947, the Board issued a supplemental opinion reaffirming its award to Piedmont, and issued to Piedmont a temporary certificate for the route (R. 610–628). The Board found, *inter alia,* that Piedmont was clearly fit, willing, and able, that State had been afforded adequate notice and a fair hearing, and that in the light of Piedmont's "catch-all" clause and the customary practice in route cases before the Board, Piedmont was an "applicant" for the route awarded it (R. 611–619). On the relative merits of the two applications, the Board found that Piedmont had more diversified experience in aviation activities, that Piedmont was superior in repair and overhaul facilities and in maintenance personnel, and that Piedmont had the nucleus of a well-rounded organization that would permit earlier inauguration of service than would State's skeleton organization (R. 611, 612).

On petition for review of the Board's decision, the court below held by a divided vote* that the Board's award to Piedmont was legally defective in that (1) the Board had exceeded its jurisdiction by making the award to a party who was

*Judge Clark's opinion for the Court was concurred in by Judge Prettyman; Judge Edgerton dissented without opinion. (R. 677–686.)

not in fact "an applicant" for the route within the meaning of section 401 (d) (2) of the Act, and (2) there was no substantial evidence to support the Board's finding that Piedmont was "fit, willing, and able" to operate the route within the meaning of that section of the Act (R. 675–686). While reversing "the decisions of the Board insofar as they resulted in the granting of a certificate" to Piedmont, the court held that it lacked the power to order the Board to issue a certificate to State, and ordered that the case be remanded for further proceedings not inconsistent with its opinion (R. 686, 687).

SPECIFICATION OF ERRORS TO BE URGED IN NO. 157

The court of appeals erred:

(1) In holding that Piedmont was not an "applicant" for the route awarded to it within the meaning of section 401 (d) of the Civil Aeronautics Act;

(2) In holding that there was no substantial evidence to support the Board's finding that Piedmont was "fit, willing, and able" within the meaning of section 401 (d) of the Civil Aeronautics Act;

(3) In holding that as a matter of law an applicant cannot be found "fit" and "able" to operate an air route unless the applicant has come forward with plans showing how it proposes to operate over each portion of the route actually awarded;

(4) In undertaking to decide for itself what is technically necessary by way of plans and organization to render an applicant "fit" and "able" to operate the route awarded to Piedmont;

(5) In reversing the decision of the Board awarding the route to Piedmont.

SUMMARY OF ARGUMENT

I. In awarding air routes under Section 401 of the Civil Aeronautics Act the Board is not limited to the precise routes and points listed in the written application of the successful applicant. It has the duty of establishing routes required by public convenience and necessity and of choosing the most qualified applicants to operate those routes. The statutory provision that routes are to be awarded to "applicants" therefor does not mean that Congress intended to introduce precise technical pleading requirements into the administration of the Act. The scope of the routes applied for is not determined simply by a mechanical reading of the literal terms of the written application; it is relevant, also, to look to the position taken by the applicants before the Board and to other pertinent facts and circumstances relating to the proceeding. The crucial question in any case is whether, viewing the proceeding as a whole, the issues were defined and the interested parties afforded the opportunity to be heard on those issues. Applying this test, the Board was warranted in finding that Piedmont was an ap-

plicant for the route awarded. Although it submitted specific proposals, Piedmont, like other applicants, made itself a general applicant for such routes in the area under consideration as the Board might see fit to establish. State was well aware of this fact and had full opportunity to be heard both as to its own qualifications and as to those of Piedmont.

The selection of Piedmont was based upon substantial evidence. The record contains a convincing demonstration of Piedmont's fitness to operate the routes awarded on the basis of its financial, technological and personnel resources. The contrary conclusion of the court below is not based upon an evaluation of this evidence but on the unwarranted conclusion that Piedmont's proposed organization and operational plans were, in the opinion of the court below, inadequate to establish its fitness to operate on the routes established by the Board. It is the Board's function to weigh an applicant's qualifications in the light of the services required by public convenience and necessity. By substituting its independent judgment for that of the Board, the court below erroneously invaded a province exclusively entrusted by Congress to the licensing agency.

II. Even if the Board had erred in awarding the route to Piedmont, it could not now be directed to certificate State. The court below correctly held

that its power is limited to setting aside the certificate issued to Piedmont. It may not assume the Board's function of selecting the applicant deemed best qualified, and the route required by public convenience and necessity, in the light of all relevant factors at the time of determination. If the Board errs on matters of law, the sole function of the reviewing court is to lay bare such error, and to remand the cause to the Board so that it can perform its statutory functions in the light of the court's decision of the legal issues.

ARGUMENT

Introduction

Viewing the issues presented by this case in broad perspective, the Civil Aeronautics Board considers that the decision below has consequences which are destructive of the Board's ability to effectuate the policies of the Act and to conduct its proceedings in an orderly and expeditious fashion. The limitation imposed upon the Board by the lower court's ruling—that the Board must treat as ineligible for award of an air route all persons whose applications and proposed operating plans do not specifically cover every portion of the route found to be required in the public convenience and necessity—will seriously hamper the Board in the promotion and development of a sound air route pattern, particularly in the realm of local or feeder air routes. The inaugura-

tion of such service and its subsequent development are greatly dependent upon the qualifications of the applicant selected to operate the route. The free hand to choose the best qualified applicant which the Board should have is lost if the Board is unable to select such applicant solely because its written application did not specifically designate the route that the Board subsequently finds is needed in the public interest. Likewise, the Board may be unable to select any carrier to operate a route it finds required by public convenience and necessity if, as sometimes occurs, no applicant proposes a particular segment of such route or if two or more proposals are combined by the Board to form such a route. There is no basis for such limitation in the Act or its legislative history. It is not likely that Congress could have intended to confine the Board within such a procedural strait-jacket and to leave the achievement of its aims to depend upon the chance that some applicant, hopefully the best qualified applicant, would embody in its application the same appraisal of the public's need for transportation as that ultimately made by the Board. The decision below would mean, in effect, that the judgment as to which routes are required in the public interest would be made, not by the Board, but by the applicants.

Such a sacrifice of the Act's objectives could not be justified, even if, as the court below evi-

dently believed, private interests thereby received new and significant protection. But no new protection is afforded to private interests by the decision of the court below. The changes in the Board's procedure or in the pleadings of applicants which would be required by the decision below in order to permit the Board to select the most qualified applicant would not help private persons either to understand the issues better or to present their cases more intelligently. Moreover, the necessary changes would impede to a substantial degree the achievement of the substantive aims of the statute.

One method of meeting the court's stringent requirements might be for the Board first to determine what routes are required by public convenience and necessity and thereafter to afford applicants an opportunity to apply for such routes. Since all applicants would be aware of the precise routes chosen, they could all apply for such routes. The necessity of thus prolonging what are already lengthy, time-consuming procedures [10] would in itself substantially diminish the Board's ability to effectuate the purpose of the Act to establish an adequate air transportation system for the United States. And the duplication of proceedings and the

[10] Proceedings involving local feeder service have proved especially time consuming, since they involve service in wide areas, and frequently have required several years for completion even under existing procedures.

consequent delay would constitute a heavy and unjustified burden on the applicants as well as the Board.

The alternative solution is equally mischievous. If the present hearing procedure is retained, an applicant would, under the decision below, be forced to apply for all conceivable combinations and permutations of possible routes so as to blanket the field and assure that the routes ultimately selected by the Board would be within the scope of his application. Applications would then be hopelessly encumbered with largely worthless material and their usefulness in directing attention to the central issues in the proceeding would be destroyed.

Congress gave the Board broad discretion to "conduct its proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice" (Section 1001, 49 U. S. C. 641), and directed the Board to "dispose" of applications for certificates "as speedily as possible" (Section 401 (c), 49 U. S. C. 481 (c)). These specific provisions of the Act should not be thwarted by importing legalisms which are prejudicial to both public and private interests.

I

THE BOARD WAS AUTHORIZED TO AWARD THE ROUTE TO PIEDMONT

A. *In awarding air routes under section 401 of the Act the Board is not limited to the precise routes and points listed in the written application of the successful applicant.*

The court below erroneously held that an applicant for a certificate within the meaning of section 401 (d) of the Civil Aeronautics Act (hereinafter called "the Act") can be only a person, who, except for minor deviations, specifically requests the routes and points actually awarded. There is no basis for such a restrictive construction.

Section 401 (d) of the Act (Appendix A, *infra*, p. 62) provides that in instances of applications for certificates of public convenience and necessity, the Board upon making certain requisite findings "shall issue a certificate authorizing the whole or any part of the transportation covered by the application" in the case of application for a permanent certificate, and "may issue a certificate authorizing the whole or any part" of the transportation requested in an application for a temporary certificate.

It is settled law that administrative agencies in discharging their statutory duties and responsibilities are not resricted to those issues and requests specifically tendered by the moving papers in the

proceeding, but may in a proper case take such action as the inquiry reveals to be required in the public interest. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333; *Cincinnati, Hamilton and Dayton Ry. Co.* v. *Interstate Commerce Commission*, 206 U. S. 142; *Alton & S. R. R.* v. *United States*, 49 F. 2d 414 (N. D. Calif.); *Chesapeake & Ohio Ry. Co.* v. *United States*, 11 F. Supp. 588 (S. D. W. Va.) *affirmed*, 296 U. S. 187; *St. Louis Southwestern Ry. Co.* v. *United States*, 234 Fed. 668 (W. D. Ky); *New York Cent. & H. R. R. Co.* v. *Interstate Commerce Commission*, 168 Fed. 131 (C. C. S. D. N. Y.). This principle has also been applied in those motor carrier cases in which the Interstate Commerce Commission has been upheld in its right to issue certificates of public convenience and necessity authorizing service to points not specifically requested by the applicant. *Chicago, St. Paul, Minneapolis and Omaha Railway Co.* v. *United States*, 322 U. S. 1; *Alton Railroad Co.* v. *United States*, 315 U. S. 15; *McCracken* v. *United States*, 47 F. Supp. 444 (D. Ore.). Similarly, it has been recognized that the Federal Communications Commission may grant radio licenses which authorize a signal of greater strength than that requested in the application or which require construction of a station differing from the one proposed by the applicant. *WREC* v. *Federal Radio Commission*, 67 F. 2d 578 (C. A. D. C.); *Woodmen of*

the World Life Ins. Soc. v. *Federal Communications Commission,* 105 F. 2d 75 (C. A. D. C.). *Cf. Plains Radio Broadcasting Co.* v. *Federal Communications Commission,* 175 F. 2d 359 (C. A. D. C.).

The foregoing are typical of the numerous cases which recognize that in situations in which public convenience and necessity or the public interest is the touchstone for the exercise of agency authority—as was true in the Board's proceeding here under review—administrative agencies are not restricted to the scope of the inquiry as determined by the private parties to the proceeding. On the contrary, it has been held that in such cases the regulatory agency has power itself to "control the range of investigation in ascertaining what is to satisfy the requirements of the public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for transportation, communication and other essential public services." *Federal Communications Commission* v. *Pottsville Broadcasting Co.,* 309 U. S. 134, 142, 143.

In the exercise of its powers and duties the Board is required by the Act (Section 2 (a), 49 U. S. C. 402 (a)) to consider, as being in the public interest and in accordance with the public convenience and necessity, the "encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the

United States, of the Postal Service, and of the national defense." In furtherance of its statutory responsibilities, the Board has taken the position that:

> In the very nature of an area proceeding of this type, the obligation placed on us by the Civil Aeronautics Act to develop a domestic air transportation system properly adapted to the needs of the commerce of the United States and the postal service requires that we consider the applications consolidated herein not with a view as to how an individual proposal would benefit such applicant or as to whether a particular proposed route is required precisely as set forth in the application, but rather with the objective of establishing a sound over-all air transportation pattern in the area involved.[11]

In the present case, the Board stated with respect to this problem:

> In passing upon applications for authority to engage in air transportation the Board must determine what route pattern will best meet the needs of the public convenience and necessity, and having done so

[11] *New England Case*, 7 C. A. B. 27, 31. The Board also has considered its authority to deviate from specific requests in other opinions. See *West Coast Case*, 6 C. A. B. 961, 979–980; *Southeastern States Case*, App. 565 (887); *Great Lakes Area Case*, 8 C. A. B. 360, 391; *Middle Atlantic Area Case*, 9 C. A. B. 131, 164; *cf. North Atlantic Case*, 6 C. A. B. 319, 346.

must select to operate that route the applicant best qualified to perform the service. Frequently, the route found to be required differs in a marked degree from that proposed by an applicant, and the best qualified applicant is not always the one proposing the route most nearly approximating that which is established.

* * * It is doubtful whether under any other interpretation of the Boards powers it could have fulfilled its obligations under the Act. This is particularly true in cases involving foreign air transportation, where international considerations play an important part, and in *area type proceedings for the establishment of local feeder service.* A construction of the Board's power in a manner that would limit its choice of a route to that proposed by some single applicant, and its choice of a carrier to that applicant outlining the route most nearly conforming with that found to be required by the Board would be an invitation to frustrate the carrying out of the very purposes which the Act seeks to accomplish. [R. 616, 617; italics added.]

In discharging its duties under the Act, the Board on numerous occasions has granted certificates authorizing service to points and along routes not specifically requested in an application in reliance upon general prayers contained in an application and other indications that the carriers in the proceeding considered themselves to

be applicants for that route pattern found to be required in the public interest.[12] While it is not contended that the Board is the final judge of its own powers, it is submitted that in a situation such as is here presented, where the statutory authority of the Board to issue certificates must be construed in the light of the highly specialized field in which it works and its responsibilities and duties under the Act, the reasonable interpretation by the Board that it is not restricted in a proper case to the issuance of certificates authorizing service only to those points and along

[12] In the various "area cases" decided by the Board other than the *Southeastern States Case*, a comparison of the applications of the successful applicants with the routes awarded will reveal that in most instances the route awarded differed from that proposed by the application, and in many instances included authorization to serve points not specifically requested. *Rocky Mountain States Air Service*, 6 C. A. B. 695; *The Florida Case*, 6 C. A. B. 765; *The West Coast Case*, 6 C. A. B. 961; *The New England Case*, 7 C. A. B. 27; *The Texas-Oklahoma Case*, 7 C. A. B. 481; *The North Central Case*, 7 C. A. B. 639; *The Great Lakes Area Case*, 8 C. A. B. 360; *The Middle Atlantic Case*, 9 C. A. B. 131; *The Arizona-New Mexico Case*, 9 C. A. B. 85; *The Mississippi Valley Case*, 8 C. A. B. 726. For examples of similar awards in other than area cases see *Mid-Cont. Air., Twin Cities-St. Louis Operation*, 2 C. A. B. 63 (Authority granted to serve Rochester, Minnesota, although not requested by the successful applicant); *National Air et al., New Orleans-Ft. Worth Service*, 4 C. A. B. 278 (Eastern Air Lines authorized to serve Lake Charles, La., upon the basis of a general prayer contained in its application). The same procedure has been followed in cases involving applications for certificates to engage in foreign air transportation. *North Atlantic Case*, 6 C. A. B. 319.

routes specifically requested in an application, should be of controlling effect. *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 130, 131; *Unemployment Compensation Commission* v. *Aragon*, 329 U. S. 143, 153, 154. *Cf. Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315.

The court below recognized and gave effect to the foregoing principles and authorities to the extent of stating that "slight deviations" from the routes actually proposed by the successful applicant were permissible in awarding a certificate (R. 681). It thus in effect conceded that an application conforming exactly to the route awarded is not a jurisdictional prerequisite to issuance of a certificate. The court failed, however, to indicate any standards by which the latitude allowable to the Board is to be judged. We think it clear that permissible deviation must be judged in terms of the existence of adequate notice to other parties that the successful applicant was in fact an applicant for the routes awarded and opportunity for other parties to be heard thereon. Compare *National Labor Relations Board* v. *Mackay Radio & Telegraph Co., supra; National Labor Relations Board* v. *Piqua Munising W. Prod. Co.*, 109 F. 2d 552 (C. A. 6); *New York Cent. & H. R. R. Co.* v. *Interstate Commerce Commission, supra; Alton & S. R. R.* v. *United States, supra.* In other words, as the Board has fully recognized, its power must be

exercised in such manner that interested parties are not deprived thereby of procedural or substantive rights. See, *e. g., North Central Case,* 7 C. A. B. 639, 674; *Atlantic Seaboard Operations,* 4 C. A. B. 552, 558, 559. The determination of these issues is a factual one which the Board must make in the first instance from all of the facts and circumstances of a particular proceeding, and is not to be determined solely from the face of an application, as the court below erroneously assumed. Just as the question of whether applications should be heard separately or together is primarily one for the Board,[11] so also is the question of whether the applicants in a consolidated proceeding are in fact competing for that route pattern which the Board shall determine to be required by the public convenience and necessity. In the present case the Board took pains to assure State, and all other applicants, a fair hearing, and, as will be demonstrated below, there was ample notice and opportunity to present evidence.

B. *Piedmont was an applicant for the route awarded*

The Board specifically found that Piedmont's application was sufficiently broad to embrace the

[11] Section 1001 of the Act (49 U. S. C. 641) provides in pertinent part:

"The [Board] may conduct its proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice."

routes awarded.[14] Second Supplemental Opinion of December 12, 1947 (R. 615). The court below, however, ruled that the "implied finding by the Board that Piedmont was an applicant for the routes awarded lacks the support of any evidence, substantial or otherwise" (R. 681). In so holding, the court completely ignored the evidence of record upon which the Board relied to support its finding. As is apparent from its opinion, the conclusion reached by the court stems entirely from its interpretation of section 401(d) and the dictionary meaning of the word "modification" employed in Piedmont's application. The court

[14] (1) Between the alternate terminal points Cincinnati, Ohio, and Louisville, Ky., the intermediate points Lexington, Ky., London-Corbin, Ky., Middlesboro-Harlan, Ky., and Bristol, Va., and (a) beyond Bristol, Va., the intermediate points Asheville, N. C., Charlotte, N. C., Southern Pines-Pinehurst-Aberdeen, N. C., and Fayetteville, N. C., and the terminal point Wilmington, N. C., and (b) beyond Bristol, Va., the intermediate points Winston-Salem, N. C., Greensboro-High Point, N. C., Raleigh-Durham, N. C., Goldsboro, N. C., and New Bern, N. C., and from May 1 to October 31, inclusive, of each year, the terminal point Morehead City, N. C.;

(2) Between the terminal point Cincinnati, Ohio, the intermediate points Portsmouth, Ohio, Ashland, Ky.-Huntington, W. Va., Charleston, W. Va., Beckley, W. Va., Princeton-Bluefield, W. Va., Roanoke, Va., Lynchburg, Va., Charlottesville, Va., and Richmond, Va., and the terminal point Norfolk;

(3) Between the terminal point Roanoke, Va., the intermediate points Danville, Va., Greensboro-High Point, N. C., Raleigh-Durham, N. C., and Fayetteville, N. C., and the terminal point Wilmington, N. C.

stated, however, that its function was not to find facts and that the question of whether Piedmont was an applicant was essentially a determination for the Board. As we shall demonstrate, the Board's finding that Petitioner was in fact an applicant for the route awarded finds abundant support in the record.

Piedmont's original application stated that it sought authority to engage in scheduled air transportation over certain proposed routes "or such modification of such routes as the Board may find public convenience and necessity require" (R. 31). In the general prayer to its application Piedmont also sought "such other and further relief, general and specific, under Section 401 of the Civil Aeronautics Act of 1938, as amended, as the Board may deem appropriate, and to which the applicant may be entitled in any proceeding in which the applicant may be heard in part or in its entirety" (R. 41). Piedmont's application proposed scheduled air transportation of persons, property, and mail in a combination passenger-property pick-up service over routes extending through North Carolina, Ohio, Virginia, West Virginia, Kentucky, Tennessee, Georgia, South Carolina, and the District of Columbia (R. 31–41).

Thereafter Piedmont filed an amended application which eliminated the specific proposal to carry passengers in the pick-up service and the

proposed services in Ohio and Kentucky (R. 62–70). However, in such amended application, Piedmont again sought specific routes "or such modification of such routes as the Board may find the public convenience and necessity require." With respect to such application the Board found:

> As amended, the application sought a total of 5,763 miles of route specifically described, consisting of five routes for conventional passenger, property, and mail service, totaling 1,404 miles, and fifteen property-mail pick-up routes comprising the remaining mileage. These proposals outlined a comprehensive system of air transportation including the states of Virginia and North Carolina, which are to be served by the route system found to be required. The route awarded Piedmont totaled approximately 1,700 miles.
>
> Piedmont's application, *when viewed in the light of all pertinent factors,* shows that that carrier was, within the meaning of section 401 (d), an applicant for the routes awarded it. It specifically proposed certain routes and types of service. Clearly these represented the proposals that it felt would best meet the public need for service in the area. It recognized, however, that the Board might reach a different conclusion, and drafted its application to indicate its desire to be considered as requesting and as willing to operate those routes which the Board determined were

> needed. Such a practice has become customary in *local feeder service applications* and is attributable in large part to the number and diversity of the factors which must be weighed, both by the various applicants in preparing their applications and by the Board in reaching its decision. [R. 616; italics added.]

At both the hearing and the argument before the Board, Piedmont indicated that its written application was to be construed broadly. The president of Piedmont testified that his company stood willing to serve any point not included in its application which was along its proposed routes (R. 470). Similarly, counsel for Piedmont, in discussing its proposed routes, indicated its unqualified willingness to extend its Norfolk-Roanoke route proposal into the mountains to Charleston, West Virginia, if the Board should think well of it (R. 554). This offer plainly demonstrates the fluidity of Piedmont's proposal and the lack of significance to be attributed to the existence of mountainous terrain in determining the scope of its proposals. Moreover, since the Board had indicated in another proceeding that it viewed service to Charleston with favor,[15] Piedmont's offer clearly disclosed that

[15] In the *Great Lakes-Florida Case*, 6 C. A. B. 429, 452, the Board in deferring certain applications for decision with the applications in the *Southeastern States Case*, stated: "* * * the major justification for the establishment at this time of a Chicago-Norfolk route would appear to be for the purpose

it was willing to render those services which the Board might find to be required.

C. *The procedure followed by the Board did not deprive State of any procedural or substantive right*

State contended below that the Board's action in issuing the certificate to Piedmont deprived it of that procedural due process to which it is entitled under the Civil Aeronautics Act, the Administrative Procedure Act,[16] and applicable general principles of law, in that it had no notice that the Board considered Piedmont to be an applicant for the routes awarded and accordingly failed to cross-examine Piedmont's witnesses fully and otherwise to rebut Piedmont's case. This contention is entirely lacking in substance. All the parties to the proceeding knew, or should have known, that in an area proceeding the Board first determines the routes required in the public interest and thereafter selects the applicant found to be best qualified to perform the required service. The Board made this clear

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of providing a local service between Charleston and Roanoke, and between Richmond, Lynchburg, and Norfolk."

[16] State relied particularly upon the provisions of section 5 (a) of the Administrative Procedure Act (60 Stat. 237, 239, 5 U. S. C. 1004 (a)). While the point is academic, it may be noted that section 5 (a) did not become effective until September 10, 1946, which date was subsequent to the hearing in the proceeding under review here. Obviously, the Administrative Procedure Act is inapplicable to the case at hand.

in its *Investigation of Local, Feeder, and Pick-up Air Service,* 6 C. A. B. 1 (1944). It there rejected a proposal to limit extensions of service by existing "trunk line" carriers to cities of 25,000 or more as a protection to "feeder" carriers because "the Board has * * * adopted the general practice of hearing in a consolidated proceeding all applications proposing service in the same general area * * * [which] affords full opportunity to consider the character of services proposed by the various applicants and the relationship of the type of each service to the air transportation needs of the individual cities or towns" (6 C. A. B. at p. 2). See also *Annual Report Of The Civil Aeronauties Board,* 1943, pp. 9–10. Thus, it is manifest that in the investigations which preceded the issuance of various "feeder" authorizations in individual area cases, the Board clearly indicated that the needs of an entire area for air transportation would be considered, and that the primary consideration in issuing certificates would be the need shown for a particular type of service to a particular point rather than a specific proposal advanced by an individual applicant.

The fact that State and the other applicants in the proceeding here under review were aware of the nature of area proceedings before the Board and of the fact that the Board would select the applicant deemed best qualified to perform the services found to be required is clearly dem-

onstrated by the record of the Board's proceeding. In each of its applications in the instant proceeding, State included a "catch-all clause" indicating that it desired to be considered as an applicant for that route which the Board found to be required in the public convenience and necessity (R. 7, 13–14, 23–24). Most of the other applications consolidated into the proceeding, including that of Piedmont, contained clauses designed to inform the Board of the desire of the particular applicant for whatever route pattern the Board might find necessary to meet the needs of the area for additional air transportation services. Such clauses ranged from prayers requesting general relief, pursuant to section 401 of the Act, to requests that the particular applicant be considered as an applicant for any point or points included in any application or applications which might be consolidated with its application for hearing or decision."[17] Further, for the benefit of those parties who might not have been familiar with the Board's practice, the Examiners, in their Prehearing Conference Report, specifically referred to the purpose and desirability of including a "catch-all clause" in an application (R. 671).

During the course of the hearing various witnesses testified that their companies would be

[17] Specimen "catch-all clauses" are set forth at pages 665 to 670 of the record, and are illustrative of the types of clauses contained in various applications.

willing to serve other points or areas which the Board might designate, in addition to those specifically mentioned in their applications (R. 673). The testimony of other witnesses indicates that it was expected that the Board in awarding certificates would place reliance upon "catch-all clauses" contained in applications (R. 671, 672).

After the conclusion of the hearing and at the time State submitted its brief to the Examiners, it obviously considered that it was competing on an equal basis with the other new applicants in the proceeding for whatever "feeder route" the Board might award. In its brief to the Examiners (R. 475–483) State undertook to establish that its "position before the Board is superior to that of any other new applicant seeking to serve this area." In so undertaking, State directed "attention to the seven new applicants whose applications, because of routes, proposed operations or ability, bear the closest resemblance to those of State." One of these new applicants was Piedmont. Five pages of the brief are then devoted to a comparison of State with the mentioned seven new applicants in the proceedings. Only in the case of two such new applicants did State even mention the specific routes which the particular applicants proposed, but on the contrary stressed its contention that it had demonstrated ability to conduct air transportation operations superior to those of any of the other new applicants. There is no question but that

State knew that the successful feeder applicant in this area would be selected upon the basis of operating ability rather than upon specific route proposals, and that, to be successful in the proceeding, it would have to demonstrate its superiority on such basis.

In its exceptions to the Examiners' report, State contended for an application to it of that very principle which it now asserts to have been beyond the Board's power, stating that the Examiners "erred in granting to other applicants and failing to grant to State certain authority, which, although not specifically sought by State, would, if granted to State rather than to other applicants, form a more logical part of the operating authority recommended by the Examiners for State" (R. 529).

Thereafter, when the case was argued before the Board, it again appears that the parties understood perfectly the nature of the Board's proceeding. As stated by counsel for one of the "new applicants" (R. 674):

> The real issues in the feeder phase of this case are two: First, does the public convenience and necessity require any local or feeder air service in this area, and if it does, which of the applicants presently before the Board is best qualified and able to develop the necessary service.

On at least three occasions counsel for feeder applicants other than Piedmont or State were

asked by Board members whether they would be willing to serve other points than those for which specific applications had been made, and in each instance the reply was in the affirmative (R. 674). The following colloquy between a Board member and counsel for State also is significant (R. 551):

> Mr. BRANCH. Mr. Hill, I am just wondering whether this map is intended to indicate all of the points which you propose to serve on these various routes, and for instance, you have quite a number of cities, small cities, or larger cities, shown, usually pretty close to the route, but apparently [not] to be served by the route. I will tell you what bothers me. Taking the routes, and running through them it would seem that you simply hit the high spots, the live cities. I wondered if this was an accurate portrait of all of what you propose to serve.
>
> Mr. HILL. I meant to explain. Those that do not sit on the lines are points which are embraced in the scope of this proceeding, and which we could and would be willing to serve if the Board should choose to assign them to us. We have a catch-all clause in our application, and we are quite willing to serve those points if the Board should feel that the public interest required that service. The points that are actually on the routes are the ones which we definitely did propose to serve.

As has been noted (*supra*, p. 29), similar statements were made on behalf of Piedmont indicating its willingness to render services to points

and over routes not specifically mentioned in its application.

It thus appears that the various applicants before the Board were all willing to render whatever service the Board should find required in the public interest, and that the applicants for feeder and local services realized that they were competing applicants for whatever certificate or certificates might be issued. The specific proposals submitted by such applicants represented the applicant's view of the services required for the area, but recognized that the Board might determine that a different pattern of service was necessary. In accordance with the customary practice in area cases, with which practice the applicants were familiar or had been informed, the various applications were so drafted as to permit the Board to select that applicant which it considered best able to perform the services found to be required.

Full opportunity was afforded State to introduce any relevant evidence which it desired to adduce in support of its own application or in opposition to other applications, and it was granted every opportunity to cross-examine other applicants. In argument to the Board on reconsideration, State's attorney stated that "as a matter of fact, we never took Piedmont seriously" (R. 605). The fact that State did not anticipate that Piedmont would be the successful applicant

or that the Board's decision came as a surprise to State did not deprive it of due process. *Market St. Ry. Co.* v. *Railroad Commission of State of California,* 324 U. S. 548, 558; *United States* v. *Pierce Auto Freight Lines,* 327 U. S. 515, 527. To establish its claim of lack of due process, State must show more than that it was under a misapprehension as to the steps which were necessary best to present its case to the Board, if in fact State was under any such misapprehension. *Market St. Ry. Co.* v. *R. R. Comm. of State of California, supra,* at page 559.

Even if it be assumed, *arguendo,* that State was *not* on notice that Piedmont was an applicant for the certificate issued, State was nevertheless required as a prerequisite to judicial review to avail itself of the opportunity to present specific objections to the Board showing wherein it was prejudiced by the Board's proceeding. *Cf. Republic Aviation Corp.* v. *National Labor Relations Board,* 324 U. S. 793, 804. While the courts endeavor to protect the rights of parties to a fair hearing, it will not be presumed that such rights have been substantially denied when parties do not embrace the opportunity to prove their grievances in the proper forum. *Chicago, St. Paul, Minneapolis & Omaha Railway Co.* v. *United States,* 322 U. S. 1, 3.

An examination of the petition for reconsideration (R. 566) filed by State after the Board's

decision of April 4, 1947, discloses that although State contended that it was deprived of notice and hearing by the Board's action in certificating Piedmont (R. 566 (10) (13)), most of the petition was directed to arguments concerning the legal power of the Board to certificate Piedmont and comparisons between Piedmont and State. While various findings of the Board were challenged as lacking support in the record, State did not request rehearing unless "deemed necessary" (R. 566 (1)) and offered only to prove on rehearing "if necessary" that it "could set up airline operations" faster than Piedmont (R. 566 (42) (54)).

During the course of the argument before the Board on reconsideration, State's attorney was questioned closely by various members of the Board as to whether the presentation of its case would have been any different if Piedmont had applied specifically for the entire routes awarded (R. 604, 605, 606). Counsel asserted generally that in such a case he believed it would have affected the nature of cross-examination and rebuttal, but failed to specify in what way it would have been affected.

After the conclusion of argument by State's attorney, Public Counsel directed attention to the fact that State had not "indicated just what it would have done if it had a further hearing, or just what evidence it would have been able to adduce on direct or cross-examination that would

improve its position" (R. 608). Thereafter, on rebuttal, State's attorney stated that although the record indicated that Piedmont had facilities for overhaul of all types of aircraft, "actually it is not so, and had State known that Piedmont was an applicant for these routes, State could have proved it" (R. 608).

It thus appears that, at most, State desired a rehearing for the purposes of introducing evidence showing that Piedmont did not have the overhaul facilities which it claimed to have, and in support of State's contention that it could inaugurate service more rapidly than Piedmont. With respect to the first point, the Board did not find that Piedmont possessed overhaul facilities for all types of aircraft, but rather merely noted the historical fact that Piedmont had demonstrated its ability to maintain and overhaul all types of aircraft under wartime Army contracts (R. 611). State did not propose to refute the finding the Board actually made, which was not, in any event, critical to its ultimate conclusion. Moreover, State was in no position to challenge the Board's findings as to Piedmont's fitness since State's attorney conceded that "both State and Piedmont are fit and able, it's a question of which has demonstrated in this record to be more fit, willing and able" (R. 607).

With respect to the second point, State adduced evidence as to when it could inaugurate services at the hearing, and took the position that

at least one year should be allowed in which to begin operations (R. 87, 90). It did not offer to prove on rehearing any facts which might affect the Board's judgment. It is not surprising, therefore, that the Board concluded that Piedmont could inaugurate services more rapidly than State, a judgment confirmed by the commencement of operations by Piedmont three months after the issuance of the certificate. Rehearing as to these matters plainly was not required and would have served no useful purpose. The determination that Piedmont could inaugurate services more rapidly than State was a judgment based upon all the evidence of record concerning the carriers, and certainly the Board was not required to reopen the record upon State's unsupported assertion that the Board erred in its conclusion drawn from undisputed facts of record. Further, the selection of Piedmont over State was based on all of the evidence relating to the superior organization and operating experience and ability of Piedmont, and did not rest solely upon the ground that Piedmont could inaugurate services in less time than State. Clearly, the Board did not abuse its discretion in refusing to reopen the record upon the basis of State's general assertions. *Interstate Commerce Commission* v. *Jersey City*, 322 U. S. 503, 514–519; *United States* v. *Pierce Auto Freight Lines*, 327 U. S. 515, 534–535.

State's objections with respect to notice and hearing amounted merely to the formal conten-

tion that State was deprived of notice and hearing.[18] Due process, however, deals with matters of substance, and its lack is not established by mere formal objections that have no substantial bearing on the rights of parties. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 351; *Federal Communications Commission* v. *WJR, The Goodwill Station, Inc.*, 337 U. S. 265, 277–278; *Market St. Ry Co.* v. *R. R. Comm. of State of California, supra,* at page 562. If State had been prejudicially affected by the course of the Board's proceeding, it was incumbent upon it to come forward with a specific request for rehearing, based upon appropriate contentions of actual prejudice. Not having done so, it cannot now be heard to contend that it was deprived of notice and hearing. *Cf. Chicago, St. Paul, Minneapolis & Omaha Railway Co.* v. *United States, supra.*

Contrary to State's assertion that the Act confers an absolute right to a certificate upon any carrier once found to be fit, willing, and able to perform proposed services required by the public convenience and necessity (see Point II,

[18] As heretofore shown, State's position before the Examiners was that it had demonstrated ability superior to that of Piedmont without reference to the specific proposals of Piedmont. This fact, coupled with the obvious fact that the specific routes requested by Piedmont paralleled a substantial portion of those requested by State, reveals the real reason why no showing of actual prejudice was made—State had presented its entire case and had nothing further to offer.

infra, p. 52), the only right granted to an applicant for a certificate is the right to a fair hearing upon its applications and a determination thereon based upon facts fairly found. State was afforded a fair hearing and, as we shall show, the selection of Piedmont over State was based upon adequate findings supported by substantial evidence. The contention that the Board was precluded from awarding the route to Piedmont, because an applicant must specifically request the precise route established by the Board, might equally have been made by Piedmont had the Board selected State. (See, *infra,* pp. 53–54.) This only serves to reinforce the view that State is now insisting on an empty procedural formality which should not be imposed as a limitation upon the Board in effectuating its responsibilities under the Act. Here, as in *Bain Peanut Co.* v. *Pinson,* 282 U. S. 499, 501, it is appropriate to "remember that the machinery of government would not work if it were not allowed a little play in its joints."

D. *The grant of the certificate of public convenience and necessity to Piedmont was based upon adequate findings supported by substantial evidence*

The court below upset the Board's finding of fitness, willingness and ability of Piedmont on the asserted ground that substantial evidence was lacking to support the finding. The essential

basis for the invalidation of this determination, however, is to be found in the court's erroneous interpretation of the terms "fitness" and "ability". The majority held in effect that under the Act an applicant cannot be found "fit" and "able" unless the applicant has come forward with plans showing how it actually proposes to operate over each portion of the routes awarded. In reaching this conclusion, the court relied upon a former decision in which it set forth the tests of fitness and ability established by the Board. *Braniff Airways, Inc.* v. *Civil Aeronautics Board,* 147 F. 2d 152, 153 (C. A. D. C.). The court erred, however, in supposing that the requirement of a plan for the conduct of service made by competent personnel meant that an applicant must show specific plans for operation over each portion of the routes awarded. The *Braniff* case did not so hold, nor has the Board ever held that an applicant must show such a plan of operations before it can be found fit, willing and able. Furthermore, by its uniform and consistent practice in awarding routes differing from specific proposals, the Board in substance has held that no such showing must in fact be made. Since a determination of the elements which must be shown to establish fitness and ability is one calling for expert judgment in aviation matters, the court below erred in substituting its views for those of the Board.

No consideration was given in the opinion below to the detailed findings of fact upon which the Board relied to support its ultimate finding of fitness and ability. On the contrary, the court contented itself with holding that Piedmont's demonstration of its ability to operate an extensive air transportation system "along basically north-south-routes, paralleling existent surface travel, and avoiding mountainous terrain", could not as a matter of law serve to support a finding of fitness and ability to operate "on basically east-west routes, generally at right angles to the major lines of flow of existing surface travel, and crossing large areas of a very mountainous region" (R. 685). The court stated this proposition as if it were so axiomatic and self-evident that "no reasonable mind" could disagree. In so holding, the court completely overlooked the fact that Piedmont had demonstrated its ability to operate over large areas of a very mountainous region, both in its proposed passenger operations and its pick-up services. (See Map, Appendix B, *infra*, p. 64.) Even disregarding pick-up operations, Piedmont proposed to serve Knoxville (R. 69) and Charleston, W. Va. (R. 554) both of which involved flying over mountainous terrain, as the topographical map in the opinion below discloses.

Actually the court below undertook to make technical judgments respecting fitness and ability which Congress has clearly entrusted to the

Board. The impact of mountainous terrain, or of the direction of air routes or surface travel, upon the capability of an applicant to operate an air route, is a matter for the Board to determine, and not the courts. Further, the fact that mountainous territory does not present the insurmountable barrier to an airplane that it presents to surface transport is so apparent as to negative any factual support for the view of the court below. The objections advanced by the court to the Board's findings relating to Piedmont's fitness and ability reflect judgments on technical questions which can hardly support the court's legal conclusion that the Board cannot certificate a carrier for routes and points other than those specifically enumerated in an application. If, as the court below thought, evidence of ability to operate a substantial air transportation system can never constitute substantial evidence of ability to operate a route differing from that specifically proposed, then the Board's findings concededly lacked support in the record. If, on the other hand, the realities of air transportation are to be considered in determining fitness and ability, no question can exist as to the legal sufficiency of the Board's findings.[19]

[19] It is doubtful that State was entitled to urge its objections to the Board's findings relating to Piedmont's fitness and ability to the court below or that the court had jurisdiction to consider these objections. At the completion of State's argument in chief upon reconsideration before the Board, in response to a question by Chairman Landis as to

The Board made the ultimate statutory finding that Piedmont was fit, willing and able (R. 565 (907), 619). This finding in turn was supported by the required basic findings relating to a proper organizational basis for the conduct of air transportation, a plan for the conduct of service made by competent personnel, and adequate financial resources. *Braniff Airways, Inc.* v. *Civil Aeronautics Board,* 147 F. 2d 152, 153 (C. A. D. C.).

The Board's finding of adequate financial ability (R. 565 (901, 902), 611, 612) was based upon an estimate that a total of $1,100,000 would be required by Piedmont to finance its proposed operations, including passenger operations, and the presentation in evidence of an adequate program whereby such an amount could be secured

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whether it was taking the position that Piedmont was not capable of operating the routes awarded, State's attorney replied (R. 607):

"We are taking the position that both State and Piedmont are fit and able, it's a question of which has demonstrated in this record to be more fit, willing and able."

Under general principles of law governing appeals from administrative orders and the specific provisions of the Civil Aeronautics Act requiring that objections must have been urged to the Board before such objections may be considered on review, State, in thus withdrawing its objections to the Board's findings respecting Piedmont well may have been precluded from urging such objections to the court. *United States* v. *Hancock Truck Lines*, 324 U. S. 774; *cf. Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 324 U. S. 635. No finding on this point was made by the court below, notwithstanding the fact that it was urged to the court.

(R. 291, 446, 451–459).[20] Similarly, the Board's findings relating to the organizational basis of Piedmont, clearly are supported by substantial evidence (R. 283–290, 436–442, 447). Indeed, the superiority of Piedmont's organization over that of States' was one of the principal reasons for designating Piedmont to operate those routes found to be required (R. 565 (902), 611, 612). The necessary organizational basis of a carrier relates only to the nucleus of the organization. *Delta Air et al., Service to Atlanta and Birmingham,* 2 C. A. B. 447, 488. Employees for various required stations and other personnel are of course not obtained until after the certificate has been issued; otherwise applicants would be unable to finance themselves during the necessarily protracted proceedings for a certificate.

The Board also found that Piedmont had outlined a "comprehensive system of air transportation" (R. 616) and possessed the "requisite ability to conduct successfully the authorized service" (R. 614). There can be no question but that the Board was justified upon the basis of the record in thus determining that Piedmont possessed the necessary "know how" to conduct scheduled operations and had presented a competent plan of operations for the specific pro-

[20] Petitioner demonstrated to the Board its ability to finance a route system of over 5,000 miles, 1,400 of which were for conventional passenger, property and mail service.

posals advanced (R. 436–442, 447, Piedmont's Exhibits, R. 283–415).

It is submitted that the plan of operations presented by Piedmont demonstrated its ability to conduct scheduled operations, fully supported the Board's findings that Piedmont was fit and able to operate the routes for which it was certificated. Although the court below held in substance that a proper plan of operations must specify schedules and equipment to be used over those routes actually awarded, the Board could not as a matter of law restrict a carrier, once certificated, to those precise details of its operations proposed in the hearing upon its application.[21] Under such circumstances, the plan of operations submitted upon an application can be used only as an indication of the carrier's ability successfully to perform scheduled air transportation services. Piedmont's demonstrated ability to operate a route system of over 1,400 passenger miles and an additional 4,400 miles of pickup service certainly justified the finding by the expert aviation agency that Piedmont was fit and able to operate the 1,700 mile system awarded.[22]

[21] Section 401 (f) of the Act (49 U. S. C. 481 (f)) provides in part that "no term, condition, or limitation of a certificate shall restrict the rights of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation * * *."

[22] Although obviously not of record in the case, the fact that Piedmont started operations with commendable promptness and has successfully continued them since demonstrates the practical correctness of the Board's findings and approach to the problem of fitness and ability.

Particular emphasis was placed by State below upon the fact that Piedmont proposed to use single engine aircraft in its operations and the court also commented on this fact. An examination of the record will disclose that many applicants proposed to utilize aircraft not then approved for commercial operations, some of which were in an experimental stage. These proposals were advanced because of the generally prevailing view that existing type aircraft were not suitable for feeder line operations, both from the standpoint of operating efficiency and the fact that airports serving smaller communities could not accommodate large aircraft.[23] Piedmont's president expressed this view in explaining its proposed use of single engine aircraft, and indicated that it preferred twin-engine aircraft (R. 442). Further, the Board could not require that a carrier utilize that type of aircraft proposed in its application, and the Board assumed, as usual (*American Export Air, Trans-Atlantic Service,* 2 C. A. B. 16, 38), that any carrier awarded a route would choose the best and most suitable type of equipment available at the time operations were begun (R. 614).[24]

[23] State proposed to serve those cities having airports unable to accommodate DC–3 aircraft with either Douglas Sky bus or Lockheed Saturn aircraft, neither of which were or are in commercial use (R. 233).

[24] State also contended below that the Board should have made a finding concerning whether the use of single engine aircraft met the safety requirements of the Board. State's

With respect to the selection of the carrier to operate the required routes, State's real contention, as pointed out by the Board, is that had more weight been ascribed to certain factors most favorable to it, a different result would have been reached (R. 612). However, as also stated in the Board's opinion, the various relevant factors employed in selecting one carrier from among competing carriers cannot be given a fixed value to be applied without change in every proceeding, nor can they be weighed in the manner of goods placed upon a set of scales (R. 612, 613).[25] Like the process of rate-making, the administra-

own attorney advised the Board that he realized that the Board did not require proof in certificate cases relating to safety considerations (R. 603). The Board pointed out in its second supplemental opinion that such matters were considered in connection with the application for an air carrier operating certificate required to conduct operations authorized by a certificate of public convenience and necessity (R. 614). Further, the legislative history of the Act establishes conclusively that "safety" is not an "element of certificates of convenience and necessity, but only of air carrier operating certificates". Conference Report to Accompany S. 3845, Report No. 2635, House of Representatives 75th Cong., 3rd Sess., p. 68.

[25] The Court is concerned only with the question of whether the Board's action is supported by the record in this case, and not with alleged inconsistencies with findings made in other proceedings and action taken in other cases. *Virginian Railway Co.* v. *United States*, 272 U. S. 658, 665; *Georgia Public Service Commission* v. *United States*, 283 U. S. 765, 774, 775; *Brotherhood of Locomotive Firemen and Enginemen* v. *Kenan*, 87 F. 2d 651 (C. A. 5); *Bondu-*

tion of national air transportation policy requires consideration of "factors that must be valued as well as weighed." *Board of Trade* v. *United States,* 314 U. S. 534, 546.

The basis of the Board's selection of Piedmont over State is clearly and succinctly stated to be that (R. 611):

> * * * the choice stemmed from the conclusion that Piedmont had demonstrated superior operational experience acquired in the successful conduct of diversified activities and possessed physical facilities and a well-rounded organization with key personnel familiar with operating conditions in the area involved that would be available for the certificated operations.

For the reasons stated, the undisputed facts concerning the two carriers and recited in the Board's opinions (R. 565 (901–902), 611, 612) amply justified the selection of Piedmont over State, and there was nothing arbitrary, capricious, or fanciful in the Board's choice. The court

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rant v. *United States*, 50 F. Supp. 704 (M. D. N. C.); *Lang Transp. Corp.* v. *United States*, 75 F. Supp. 915, 925 (S. D. Cal.). Similarly, if the Board's findings are supported by the record, the fact that the recommendations of Public Counsel and the examiners were not followed is of no significance. *National Labor Relations Board* v. *Laister-Kaufmann Aircraft Corporation*, 144 F. 2d 9 (C. A. 8), *National Labor Relations Board* v. *Botany Worsted Mills*, 135 F. 2d 876 (C. A. 3), certiorari denied, 319 U. S. 751.

below erred in ruling that because Piedmont did not submit a plan of operations for the specific routes awarded, the selection of Piedmont was arbitrary and capricious, and that ruling should be reversed.

II.

THE COURT BELOW PROPERLY HELD THAT IT LACKED POWER TO DIRECT THE BOARD TO CERTIFICATE STATE

State unsuccessfully sought in the court below, and by its cross-petition for certiorari seeks here, a determination that it is entitled to a judicial order requiring the Board to award to it the route the Board awarded to Piedmont. It is evident that this question becomes material here only in the event that it is concluded, contrary to our contention, that the Board erred in certificating Piedmont. Accordingly, for the purposes of the following discussion it will be assumed, *arguendo,* that the decision of the majority of the court below in setting aside the Piedmont award was proper.

It is elementary that no court may grant an authorization which a regulatory agency has refused. *Scripps-Howard Radio* v. *Federal Communications Commission,* 316 U. S. 4, 14; *cf. Federal Power Commission* v. *Pacific Power and Light Company,* 307 U. S. 156; *United States* v. *Jones,* 336 U. S. 641. Equally well settled is the

principle that the courts are not at liberty to prescribe the attitude that such an agency must adopt toward the exercise of the discretion left to it rather than to the courts. *Interstate Commerce Commission* v. *Inland Waterways Corporation*, 319 U. S. 671, 691.

State contends that no element of discretion is left to the Board in this case. On the contrary, State asserts that the issuance of the certificate to it would constitute merely a ministerial act since the Board already has found public convenience and necessity for the routes in question and has further found State to be fit, willing and able. The disqualification of Piedmont by the court below, if that disqualification is sustained, would, under State's theory, leave State as the only qualified candidate for the certificate and absolutely entitled thereto as a matter of law. Apart from the fact that State, although once found by the Board to be fit and able, may no longer be so, State is not, on its present applications, qualified under its own theory for issuance of the certificate in question.

The routes established by the Board did not follow in all respects the specific routes and plan of operations proposed by State. Moreover, these routes included points for which authority had not been specifically requested by State. Accord-

ingly, State's contention that it was entitled as a matter of right under the Act to the certificate which the Board awarded to Piedmont necessarily must rest upon the application to itself of the very principle to which it objects when applied to Piedmont. Further, State was not the only qualified applicant for the routes awarded to Piedmont. The Cincinnati-Norfolk route was requested by three certificated carriers, Eastern Air Lines, Delta Air Lines, and Pennsylvania Central Airlines (R. 565 (866, 867, 896)). The Board found that such route was required and could not have found that these carriers were other than fit. Moreover, an examination of the proposals of Delta Air Lines (R. 659) and Eastern Air Lines (R. 663), will disclose that the specific routes requested by these carriers, together with the routes for which they already held certificates, closely approximated the routes awarded to Piedmont.[26] If State's position were sound, then any or all of these carriers, in addition to State, could contend that some or all of the routes awarded to

[26] State's contention that it alone established the need for those services for which Piedmont was certificated is without merit. An examination of the maps setting forth the proposals of the various applicants in the proceeding (R. 638–664) will disclose that, as the Board indicated in its second supplemental opinion (R. 618), virtually every proposal embraced in substance all or a part of the proposals of one or more applicants. As previously stated, all of the applicants offered evidence in support of their proposals. In addition, similar testimony was offered by the various intervening municipal organizations. (See Statement, *supra* at pp. 6–7.)

Piedmont should be awarded to them as a matter of statutory right, which would be absurd.

The fact that upon remand the certification of a new carrier or the determination of whether any carrier should be certificated for the routes in question rests within the Board's discretion, and that the Board is not bound by the findings already made with respect to State, is conclusively established by the decision of this Court in *Federal Communications Commission* v. *Pottsville Broadcasting Company*, 309 U. S. 134. In that case a determination of the Federal Communications Commission as to the financial qualifications of an applicant for a broadcasting license was reversed by the Court of Appeals. On remand it was proposed to reopen consideration of certain of the applicant's other qualifications. The Court of Appeals sought to prevent this action by the Commission by issuing a writ of mandamus. It was of the view that the Commission's previous findings, having been in effect approved by the court, could not be altered in the absence of exceptional circumstances, and then only by permission of the court. *Pottsville Broadcasting Co.* v. *Federal Communications Commission*, 105 F. 2d 36 (C. A. D. C.).[27]

[27] As the court conceived it, the question was "whether the Commission, having decided that the petitioner was qualified in particular respects, may now disregard * * * the case made by it and consider its application on a comparative basis with subsequent applications on records made after the Commission's original decision." 105 F. 2d at 39.

In reversing the lower court's grant of mandamus, this Court delineated the respective functions of reviewing court and administrative agency, pointing out that the sole function of the court is to correct errors of law which may have occurred in the administrative proceeding. On remand the agency is bound to act upon that correction. Such a correction, however, does not foreclose the agency from enforcing the legislative policy committed to its charge—in the present case that of granting authority to engage in air transportation according to the requirements of public convenience and necessity. Here, as in *Pottsville,* if the administrative agency erred, the Court will lay bare that error, and on remand the Board will be "again charged with the duty of judging the application [of State] in the light of 'public convenience, interest, or necessity'" (309 U. S. at 145). *Cf. Securities and Exchange Commission* v. *Chenery Corp.,* 332 U. S. 194.

State contends that jurisdiction to order the Board to award it a certificate is conferred by Section 10 (e) of the Administrative Procedure Act, 60 Stat. 243, 5 U. S. C. 1009. But the foregoing principles of law have not been altered by that section. A reviewing court is there authorized to "compel agency action unlawfully withheld" but this power, like all other powers granted by Section 10, is subject to two express statutory exceptions. Review is permitted "Ex-

cept so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion."

The present case clearly falls with the second category. Section 401 (d) (1) of the Civil Aeronautics Act (49 U. S. C. § 481) explicitly commits to the Board the policy determination as to whether the particular transportation "is required by the public convenience and necessity." The court below correctly held that there is no warrant in the Administrative Procedure Act for assumption by a court of the function of making such a discretionary determination. Compare *McGrath* v. *Zander*, October 10, 1949, C. A. D. C.[28] And we have already pointed out that the contention in the present case that the discretionary decisions have been irrevocably made, so that the remaining function is ministerial, is directly refuted by this Court's decision in the *Pottsville* case. The legislative history of Section 10 makes clear that the principle of that case was intended to be left unimpaired by the section.

The Attorney General, in his comments to the Senate Committee on the Judiciary on the bill

[28] In the *Zander* case the Court of Appeals reversed a judgment directing the return of property seized under the Trading With the Enemy Act, 40 Stat. 411, as amended, 50 U. S. C. App. 1 *et seq.* The judgment had purportedly rested on a section of that Act permitting return only if the President determined such return to be "in the interest of the United States" (50 U. S. C. App. 32) and no such determination had been made.

which became the Administrative Procedure Act, stated that Section 10 (e):

> * * * declares the existing law concerning the scope of judicial review. The power of the court to direct or compel agency action unlawfully withheld or unreasonably delayed is not intended to confer any nonjudicial functions or to narrow the principle of continuous administrative control enunciated by the Supreme Court in *Federal Communications Commission* v. *Pottsville Broadcasting Co.* (309 U. S. 134).[29]

Since these comments by the Attorney General were included in the Committee's report, they serve as an indication of the Committee's opinion of the intended effect of clause (A) of Section 10 (e). *American Stevedores* v. *Porello*, 330 U. S. 446, 452. Further, the legislative history is replete with other instances in which the Congress clearly demonstrated that it intended by Section 10 (e) only to restate existing law, and that clause (A) of that section relating to the compelling of agency action was not intended to substitute the discretion of the courts for that of the agencies.[30] The language of Section 10 (e)

[29] Senate Report No. 752, Report to Accompany S. 7, Committee on the Judiciary, 79th Cong., 1st Sess. (Administrative Procedure Act, Legislative History, Senate Document 248, 79th Cong., 2nd Sess., p. 230.)

[30] See *id.*, pp. 40, 214, 278, 323, 415.

is clearly concerned with compelling an agency to take *some* action on pending matters, rather than with compelling a particular result.[31]

The principles of law embodied in the *Pottsville* case, unaffected by the Administrative Procedure Act, clearly preclude a judicial directive that the Board certificate State even if it is determined that the Board erroneously certificated Piedmont. The court below correctly refused to depart from these principles.

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[31] The purpose of clause (A) of Section 10 (e) has been effectively summarized as follows:

"Clause (A) authorizing a reviewing court to 'compel agency action unlawfully withheld or unreasonably delayed,' appears to be a particularized restatement of existing judicial practice under section 262 of the Judicial Code (28 U. S. C. 377). *Safeway Stores, Inc.* v. *Brown*, 138 F. 2d 278 (E. C. A., 1943), certiorari denied, 320 U. S. 797. The power thus stated is vested in 'the reviewing court,' which, in this context, would seem to be the court which has or would have jurisdiction to review the final agency action. See *Roche* v. *Evaporated Milk Assn.*, 319 U. S. 21, 25 (1943). Orders in the nature of a writ of mandamus have been employed to compel an administrative agency to act, *Safeway Stores, Inc.* v. *Brown*, *supra*, or to assume jurisdiction, *Interstate Commerce Commission* v. *United States ex rel Humboldt Steamship Co.*, 224 U. S. 474 (1912), or to compel an agency or officer to perform a ministerial or non-discretionary act. Clause (A) of section 10 (e) was apparently intended to codify these judicial functions." *Attorney General's Manual on the Administrative Procedure Act* (1947) p. 108.

CONCLUSION

For the foregoing reasons the judgment should be reversed with directions that the orders of the Civil Aeronautics Board be affirmed.

Respectfully submitted,

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November, 1949.

APPENDIX A

The pertinent provisions of the Civil Aeronautics Act of 1938, as amended,[1] are as follows:

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

CERTIFICATE REQUIRED

SEC. 401 (a). No air carrier shall engage in any air transportation unless there is in force a certificate issued by the [Board] authorizing such air carrier to engage in such transportation: * * *

APPLICATION FOR CERTIFICATE

(b) Application for a certificate shall be made in writing to the [Board] and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the [Board] shall by regulation require.

NOTICE OF APPLICATION

(c) Upon the filing of any such application, the [Board] shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the [Board] and to such other persons as the [Board] may by regulation determine. Any interested person may file with the [Board] a protest or memoran-

[1] Act of June 23, 1938, c. 601, 52 Stat. 973; Reorg. Plan No. IV, Sec. 7, effective June 30, 1940, 5 F. R. 2421, 54 Stat. 1235, 49 U. S. C. 401, et seq.

dum of opposition to or in support of the issuance of a certificate. Such application shall be set for public hearing, and the [Board] shall dispose of such application as speedily as possible.

ISSUANCE OF CERTIFICATE

(d) (1) The [Board] shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the [Board] hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the [Board] may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the [Board] hereunder.

The pertinent provisions of the Administrative Procedure Act[2] are as follows:

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency

[2] Act of June 11, 1946, c. 324, 60 Stat. 237, 5 U. S. C. 1001, *et seq.*

action is by law committed to agency discretion—

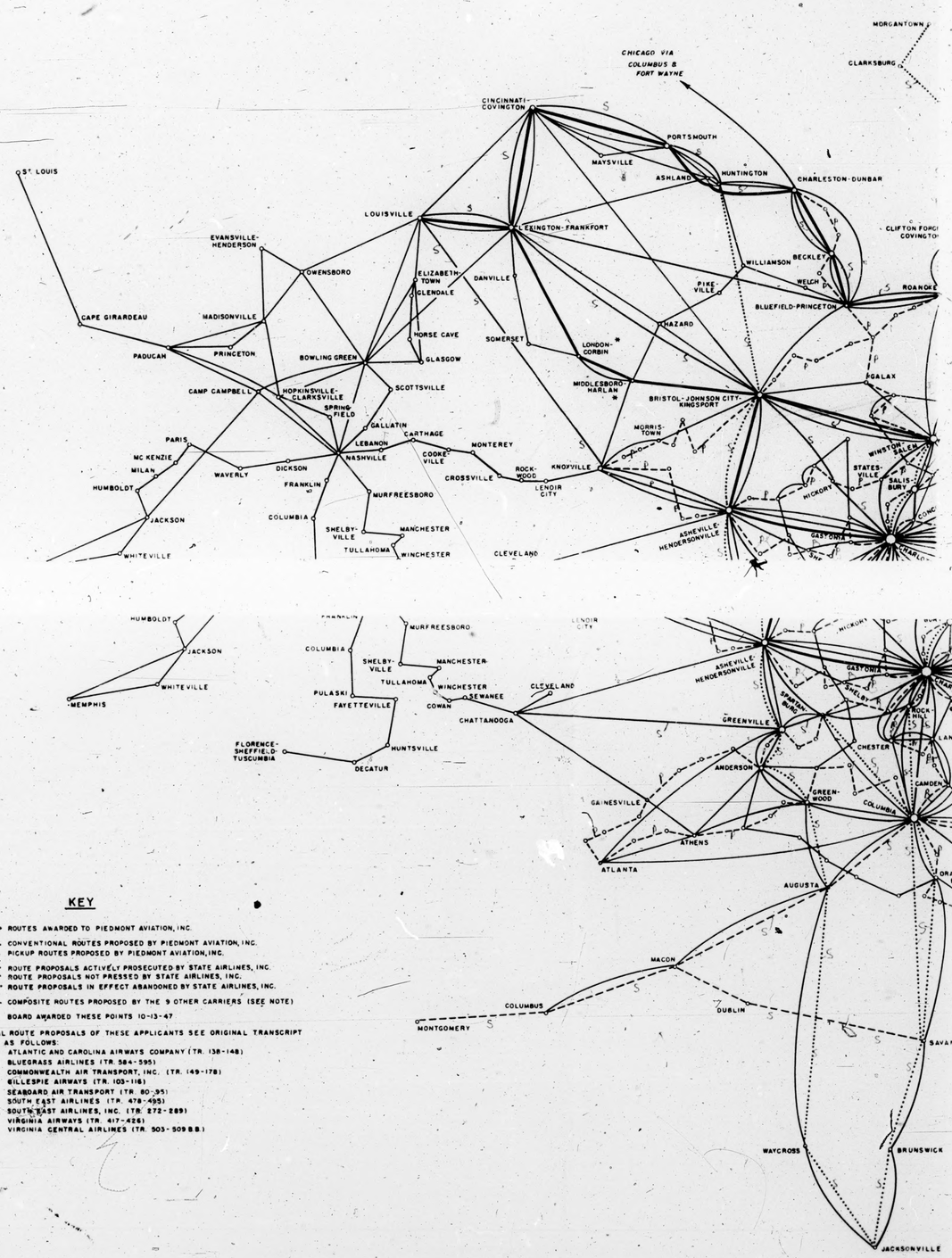
(a) *Right of review.*—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

* * * * *

(e) *Scope of review.*—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

APPENDIX B

COMPARISON BETWEEN ROUTE AWARDED BY BOARD AND PROPOSED ROUTES OF 11 APPLICANTS CONSIDERED FOR AWARD OF BOARD'S ROUTE



KEY

- ROUTES AWARDED TO PIEDMONT AVIATION, INC.
- PIEDMONT — CONVENTIONAL ROUTES PROPOSED BY PIEDMONT AVIATION, INC.
- PIEDMONT — PICKUP ROUTES PROPOSED BY PIEDMONT AVIATION, INC.
- STATE — ROUTE PROPOSALS ACTIVELY PROSECUTED BY STATE AIRLINES, INC.
- STATE — ROUTE PROPOSALS NOT PRESSED BY STATE AIRLINES, INC.
- ROUTE PROPOSALS IN EFFECT ABANDONED BY STATE AIRLINES, INC.
- COMPOSITE ROUTES PROPOSED BY THE 9 OTHER CARRIERS (SEE NOTE)
- * BOARD AWARDED THESE POINTS 10-13-47

NOTE: FOR INDIVIDUAL ROUTE PROPOSALS OF THESE APPLICANTS SEE ORIGINAL TRANSCRIPT OF RECORD AS FOLLOWS:

ATLANTIC AND CAROLINA AIRWAYS COMPANY (TR. 138-148)
BLUEGRASS AIRLINES (TR. 584-595)
COMMONWEALTH AIR TRANSPORT, INC. (TR. 149-178)
GILLESPIE AIRWAYS (TR. 103-116)
SEABOARD AIR TRANSPORT (TR. 80-95)
SOUTH EAST AIRLINES (TR. 478-495)
SOUTH EAST AIRLINES, INC. (TR. 272-289)
VIRGINIA AIRWAYS (TR. 417-426)
VIRGINIA CENTRAL AIRLINES (TR. 503-509 B.B.)

CIVIL AERONAUTICS BOARD

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Supreme Court of the United States

OCTOBER TERM, 1949

CIVIL AERONAUTICS BOARD, *Petitioner,* v. STATE AIRLINES, INC., *Respondent.*	No. 157
STATE AIRLINES, INC., *Cross-Petitioner,* v. CIVIL AERONAUTICS BOARD and PIEDMONT AVIATION, INC., *Cross-Respondents.*	No. 158

REPLY OF STATE AIRLINES, INC. TO SUPPLEMENTAL MEMORANDUM FILED BY CIVIL AERONAUTICS BOARD.

This reply is necessary because the Board's memorandum goes far beyond furnishing factual information. It makes arguments some of which are both new and unfounded.

The entire memorandum is directed only to the due process point. Undoubtedly this point is important. It did, however, not enter into the decision below and is stressed here by State

only as an additional reason for holding that the certification of Piedmont was not authorized by the statute. Even if it be assumed, though this is not the fact, that the Board had announced its intent to certificate Piedmont without regard to Piedmont's own application, such certification would nevertheless have violated the plain limitation of the statute confining the Board's power to certificating "the whole or any part of the transportation covered by the application" (Civil Aeronautics Act, § 401[d]; see State's Rep. Br., p. 13).

The fundamental issue of notice to which this Court addressed some questions during the argument was whether or not State and others had notice of the Board's intent to certificate to Piedmont routes entirely uncovered by Piedmont's application. That there was no notice of such intent is a specific fact. The Board's attempted answer, however, merely forsakes the ugly fact for the glitter of beautiful generalities.

(a) Reply to paragraphs numbered 1, 2 and 3.

The facts stated in these paragraphs are accurate. They deal entirely with notice to be given of "each application". Such notice was given. It notified all interested parties of Piedmont's application. It was notice that Piedmont was not a candidate for the routes certificated.

(b) Reply to paragraph numbered 4.

The use of the matter set out in this paragraph in the present case is inexcusable. The Board's regulation, which the Board now tenders to this Court as evidence of notice to State as to issues to be taken up at hearings in the case here involved, was promulgated to be effective on *September 11, 1946*. The issues to be disposed of were discussed at the prehearing conference on *January 22, 1945* (Tr. 733). The hearings in this case were

held in the *summer of 1945* (see, *e.g.*, R. 416). The hearings were closed more than a year *before* the regulation, now made the cornerstone of the Board's argument, was even thought of by the Board and the examiners' report was filed several months before September 11, 1946* (R. 525).

Whereas the Board seeks to leave the impression by its underscoring that a consolidation order sets general geographic limits for a proceeding, the fact is otherwise. All that a consolidation order has ever done, and all that was done in this case, is to consolidate actual applications or parts thereof for hearing (R. 27; Tr. 707, *et seq.*). Nowhere in this record, or in any other Board record dealing with domestic applications under Section 401(d) of the Act, has the Board set for hearing any general question of certification within a given area. The order of consolidation has never done more than to order a common hearing for specific applications. The geographical limits result from the points specified in the applications consolidated and not from any issue specified in the order of consolidation. The "scope" of the hearings is thus established by the applications to be considered and by nothing else. Those are the plain unvarnished facts.

(c) Reply to paragraphs numbered 5 and 6.

The facts here stated are accurate but have no bearing on the issue of due process. It is not contended and cannot be contended that anything in either the prehearing conference notice or the report of that conference gave the slightest notice of an intent to certificate to Piedmont any routes outside of those covered by its application.

---

*There was no similar regulation in 1945 as the Administrative Procedure Act pursuant to which this regulation was made was not enacted until 1946 (60 Stat. 237).

(d) Reply to paragraphs numbered 7 and 8.

The matter quoted in paragraph numbered 7 from the conference report supports State's argument that in consolidated proceedings the Board, prior to the present case, has dealt only with specific applications. Here the examiners plainly stated that they were dealing not with any general geographic problem but with "the applications included in the consolidated order" which "involve service to the states" then listed.

We have dealt heretofore with the matter quoted in paragraph numbered 8 (State Br., pp. 56-7; State Rep. Br., p. 22). Not only does the examiners' language (R. 671) show that they would not recommend for any applicant entirely different routes from those covered by the application, but the examiners' language dealing with amendments (R. 671), to which the Board does not call the Court's attention, shows that each applicant was to be limited to the routes covered by its application. If, as the Board now contends, once any applicant is in a consolidated proceeding it is entitled to any routes in the "area", why did the examiners require (R. 671)

> "* * * all amendments to applications consolidated in this proceeding must be filed within ten days * * *"?

On the Board's theory this would have been a useless formality for all were in any event candidates for the entire area involved.

(e) Reply to paragraphs numbered 9, 10 and 11.

Again the facts here stated, while true, have no relevancy. It is not contended, and cannot be, that the orders or notices referred to contained any intimation that the Board would disregard the statute and certificate Piedmont for routes not covered by its application at all.

(f) Reply to paragraph numbered 12.

The Board here seeks largely to reargue matters already covered by its Brief (pp. 31-42). A complete answer to these contentions appears in State's Reply Brief, pp. 19-26.

(g) Reply to paragraph numbered 13.

This is the Board's own self-serving justification of its action in certifying Piedmont. It portrays the culmination of years of callous indifference to State's rights—an attitude which prompted State to request, both here and in the court below, a mandatory order compelling the Board to accept in its dealings with State the fundamental standards of fair play. Thus, the Board states (R. 618):

> "The mere fact that State, intent on matters which it deemed more important, did not consider Piedmont as a threat to it, cannot be used to support a plea that it was deprived of notice and hearing."

State did not consider Piedmont "a threat" because Piedmont had not applied for State's routes. Piedmont was not a competing applicant for the transportation sought by State. State introduced no evidence of Piedmont's many shortcomings (see, *e.g.*, R. 629 [78-81]). It had no opportunity to do so. Piedmont's certification came as a complete surprise (*cf.* R. 681).

Contrary to the Board's statement, "The procedure in this case" was not "the same as that followed by the Board both prior to and since this case in * * * local feeder area proceedings". The cases which the Board cites do not support its statement (see State's Rep. Br., pp. 9-12, 21). The Board, in a uniform line of decisions in "consolidated" cases, has repeatedly held that it will not certify an applicant for routes not covered

by its application (State Br., pp. 54-5, 59-60, 65-7, 71-3). Among other reasons for such decisions the Board has specifically assigned the "denial of due process" if certification is to cover points other than those specified in the application (State Br., pp. 66-7).

December 19, 1949.

Respectfully submitted,

FREDERICK W. P. LORENZEN,
Counsel for State Airlines, Inc.

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Supreme Court of the United States

OCTOBER TERM, 1949

No. 157

CIVIL AERONAUTICS BOARD,
Petitioner,

vs.

STATE AIRLINES, INC.,
Respondent.

No. 159

PIEDMONT AVIATION, INC.,
Petitioner,

vs.

STATE AIRLINES, INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI FILED BY CIVIL AERONAUTICS BOARD AND PIEDMONT AVIATION, INC.

FREDERICK W. P. LORENZEN
Counsel for Respondent

PHILIP SCHLEIT
Of Counsel

August 6, 1949

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Supreme Court of the United States

OCTOBER TERM, 1949

CIVIL AERONAUTICS BOARD, *Petitioner,* *vs.* STATE AIRLINES, INC., *Respondent.*	No. 157
PIEDMONT AVIATION, INC., *Petitioner,* *vs.* STATE AIRLINES, INC., *Respondent.*	No. 159

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI FILED BY CIVIL AERONAUTICS BOARD AND PIEDMONT AVIATION, INC.

For a fair counter-statement of the case, we respectfully refer this Court to the statement contained in State's cross-petition for writ of certiorari (No. 158, October Term, 1949) at pages 3-10.

I

OPPOSITION TO BOARD'S PETITION

The Bases for the Board's Petition are Unsupportable

The petition for writ of certiorari filed by the Board[1] seems to be based upon three fundamental misconceptions relating to

[1]Petitioner, Civil Aeronautics Board, is hereinafter referred to as the "Board"; petitioner, Piedmont Aviation, Inc., is hereinafter referred to

(1) the scope and extent of the application on which Piedmont proceeded before the Civil Aeronautics Board; (2) the discretion entrusted to the Board by Congress; (3) the scope of the decision below.[1]

(1) The Board misconceives the extent of Piedmont's application.

The extent of Piedmont's application is not subject to debate. It applied for basically north and south routes extending from points principally in North and South Carolina to other points, also east of the Appalachian Mountains, with terminal points at Washington, D. C. and Norfolk, Virginia (App. 69-70). The map incorporated in the opinion below (676) reflects precisely the scope of Piedmont's application for a certificate authorizing the transportation of passengers, mail and property (App. 69-70). The scope of Piedmont's application is properly shown on Appendix B annexed to the Board's petition in solid red lines.[2] A comparison of the transportation applied for with the transportation certificated, consisting of the solid black lines both on the court's maps (676) and the Board's map, Appendix

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as "Piedmont"; respondent, State Airlines, Inc., is hereinafter referred to as "State". The citation "App." followed by number is to page numbers of the printed appendix filed in the court below and made a part of the printed record here. Plain numerical citations, without other explanation, refer to the supplemental printed record of proceedings in the court below filed here with the petitions for writs of certiorari. The citations preceded by "p." refer to pages of the respective petitions for writs of certiorari and Piedmont's brief in support of its petition.

[1]The decision below has now been reported in the Advance Sheets, *State Airlines* v. *Civil Aeronautics Board*, 174 F. 2d 510.

[2]The broken red lines on the Board's map have nothing to do with the present case for they concern Piedmont's application for a certificate to transport property and mail by the pickup method—a method wholly unsuitable for passenger transportation, which is the type of transportation certificated and here involved (see pp. 9-10, *infra*).

B, shows emphatically that the one bears no resemblance to the other.[1] There is no question here of whether the Board is entitled to award a certificate for substantially the transportation applied for, or whether it is entitled to certify transportation differing only in a small "segment" from the transportation applied for. The question is whether the Board can certificate transportation entirely different from that covered by the application.

The implication left by the Board's statement that the route certificated "was in some respects a consolidation" of the routes applied for by State and Piedmont (p. 8) is entirely unwarranted. The route certificated to Piedmont was that applied for by State and not covered by Piedmont's application at all. As the court below pointed out after discussing the Piedmont application (680):

> "It will also be noted from examination of Map No. 1 that Piedmont's broken-line (proposed) routes coincide exactly with the Board's (awarded) routes in only two places and there, in each case, for only very short

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[1]The map, which is Appendix B to the Board's petition, serves no purpose not equally well served by the maps annexed to the court's opinion (676). The solid blue lines are identical with the dotted red lines on the court's map No. 2. The solid black lines of Appendix B are identical with the solid black lines of the court's maps (except for slight deviations resulting from the larger scale). The solid red lines are identical with the dotted green lines on the court's map No. 1. The confusion engendered by the other lines hardly leads to an understanding of this case. Not only are the broken red lines wholly immaterial, but the broken blue lines showing routes abandoned by State, and the other lines showing "composite routes", have no relevance whatever here. The composite routes are particularly unfair in that they leave the inference that there were applicants other than State for the certificated routes here involved. That is not the case. If the composite applications were broken down so that each application were shown separately, it would be quite apparent that only State applied for the route pattern which the Board found was required by public convenience and necessity.

distances and only between two adjacent points on a branch route. Of the total of 39 points which Piedmont proposed to serve, only 9 lie along routes awarded by the Board. We think it completely obvious that Piedmont did not, in fact, specifically apply for the routes it was awarded by the Board."

As for the Board's present contention that the modification clause found in the Piedmont application is sufficient to change the scope of that application entirely, it seems unnecessary to add to the discussion by the court below (680-1; see also pp. 15-7, *infra*).

It is plain that Piedmont was not an applicant for the transportation certificated by the Board, and the Board's petition based upon the contrary premise is untenable.

(2) The Board misconceives the extent of the powers delegated to it by Congress.

The Board's basic reason for seeking a review here is that the decision of the court below will "confine the Board within * * * a procedural strait-jacket" (p. 13). The argument is that the Board should be entitled to decide whether service is required quite apart from any applications for transportation and should then be permitted to certify such transportation to any party whether an applicant for transportation or otherwise. Perhaps Congress could have delegated to the Board such broad powers. But Congress did not see fit to do so. It did not confer upon the Board the right to issue certificates of public convenience and necessity irrespective of applications. The right to issue certificates was carefully limited by Section 401 (d) (1) and (2) of the Civil Aeronautics Act (p. 12, *infra*). The Board was given the power and duty to "issue a certificate

authorizing the whole or any part of the transportation *covered by the application.*[1] There, the power of the Board ended (see pp. 12-4, *infra*).

If this power is too narrow, as the Board now contends (pp. 12-13), relief may be sought in Congress but hardly in the courts. Where the limitations and standards imposed by Congress are plain, the administrative agency must stay within such limitations and follow such standards. As this Court pointed out in *U. S.* v. *Carolina Carriers Corp.*, 315 U. S. 475, 489:

> "Neither the Court nor the Commission is warranted in departing from those standards because of any doubts which may exist as to the wisdom of following the course which Congress has chosen."

This decision controls here.

Furthermore, it should be noted that while Congress limited the original issuance of a certificate of public convenience and necessity to the whole or any part of the transportation covered by the application, it conferred upon the Board certain additional powers "after notice and hearing" to "alter, amend, modify or suspend any such [existing] certificate, in whole or in part" upon certain specified conditions.[2] It is significant that no such power was given to the Board with respect to the application for new certificates.

The published decisions of the Board show that heretofore the Board has been able to perform its duties within the framework of the Civil Aeronautics Act as construed in this case by the court below. Until the singular decision here made, the Board limited the issuance of new certificates to the "whole or

---

[1]All emphasis supplied unless otherwise indicated.

[2]Civil Aeronautics Act of 1938, Section 401(h), 52 Stat. 987, 49 U. S. C., Sec. 481(h).

any part of the transportation covered by the application." (See, for example, cases cited at page 16, *infra*). This nation is honey-combed with a pattern of airlines, both trunklines and local lines, certificated pursuant to the Congressional formula. As a practical matter it thus seems plain that judicial extension of the limited power to certificate conferred by Congress is wholly unnecessary to achieve the results intended by the legislation. The decision below, therefore, raises no substantial question of statutory construction for review here.

(3) The Board misconceives the scope of the decision below.

The Board devotes three of its four specific assignments of errors (pp. 10-11) and the bulk of its argument dealing with "reasons for granting the writ" (pp. 11-17) to the statement made by the court below that finding Piedmont fit, willing and able to perform the transportation certificated was a finding "which is not only unjustified on the basis of the record, but unjustifiable" (683). This statement and the discussion in connection therewith did not constitute an independent ground for reversal but merely furnished additional support for the court's legal conclusion that the Board might not, under the Act of Congress here in question, certify transportation to one who was not an applicant therefor. The court specifically limited its decision to two questions stating (679):

> "The contentions of the parties to this review, as set forth in their briefs and in oral argument before us, make it clear that our decision depends upon the answers which must be given the following two questions: (1) was Piedmont, at the time of the Board's decision, an applicant for the routes it was ultimately awarded; and (2) if not, can the Board award a certificate to one

> who was not an applicant for the routes authorized by that certificate?"

The incidental discussion as to the lack of any support for the Board's finding that Piedmont was fit, willing and able occurred in the consideration of the second question and was immediately followed by the conclusion (686):

> "From the foregoing it is apparent that we answer both of the questions posed as the major issues in the case in the negative."

As the decision of the court below seems unassailable on the two basic issues decided by it, it makes little difference whether the court below was correct or incorrect in its incidental suggestion that there was no evidence to support the finding as to Piedmont's fitness, willingness and ability. But the court below was also correct on this score (pp. 21-4, *infra*).

In any event, review will usually not be granted upon the assertion by petitioner that the specific facts of the case require an answer different from the one given in the court below. *Houston Oil Co.* v. *Goodrich*, 245 U. S. 440, 441; *Southern Power Co.* v. *Pub. Serv. Co.*, 263 U. S. 508, 509; *Robertson and Kirkham*, Jurisdiction of the Supreme Court of the U. S. p. 534.

NO REASON FOR REVIEW IS PRESENTED

With the basic misconceptions upon which the petition for review is based eliminated, no reason for granting a review here remains. The portion of the Civil Aeronautics Act applied by the court below is plain on its face. The court below did no more than follow the statute when it held that one who did

not apply for transportation found by the Board to be necessary, was not entitled to a certificate. The court below specifically pointed out that it was not placing any literal or narrow construction upon the statute. Thus, the court said (681):

> "We here rule, on the facts presented and uncontroverted, that no reasonable mind could conclude that the routes awarded in this case to Piedmont were merely a modification of the routes proposed by it. The implied finding by the Board that Piedmont was an applicant for the routes awarded lacks the support of any evidence, substantial or otherwise. In ruling thus, *we have not said, and we do not wish to be understood as ruling, that the Board may not take advantage of a 'catch-all clause'* in an application by granting routes which represent slight deviations from those proposed."

The specific examples then cited by the court show plainly what the court meant and, contrary to the Board's suggestion (pp. 18-9), leave no ambiguity to be corrected by review.

II.

OPPOSITION TO PIEDMONT'S PETITION

Both the petition for writ of *certiorari* and its accompanying brief are concerned largely with Piedmont's claimed grievances relating to the decision of the court below and deal only slightly with reasons for review by this Court. It is, accordingly, difficult to attack the petition without a detailed consideration of the merits of the case. At this stage such a consideration would seem to be an imposition upon the Court. There are, however, certain fundamental inaccuracies in the presentation made by Piedmont which it may be desirable to clear up at this time.

(1) The charts embodied in Piedmont's petition are erroneous and its application is much more limited in scope.

In endeavoring to sustain the argument that Piedmont was in fact an applicant for the transportation erroneously awarded to it, Piedmont sets out two charts opposite page 2 of its petition.

Neither on the face of the chart nor in the text is it stated that the routes applied for, as shown on Chart 1, were expressly abandoned by Piedmont in its application filed March 8, 1945 (App. 63-70). Indeed, Piedmont, in its brief (see *e.g.* pp. 15, 24), seeks to leave the impression that it went before the Board on the basis of the application portrayed by Chart 1—a proposition concededly contrary to the actual fact. The abandonment of the application for transportation embodied in Chart 1 is beyond dispute (App. 63-70).

With respect to Chart 2, Piedmont neither on the face of the chart nor in the text advises this Court that the dotted lines upon that chart involve an application for authority solely to transport "mail, express and property using the pick-up method" (App. 64). The pick-up service applied for was a service of points without stops whereby mail and possibly property was to be picked up from a ground installation by a device on the plane while in flight (*All American Aviation, Pick-up, Delivery Service*, 2 C. A. B. 133, 137, f.n. 3). This service needs no airports except the *termini* and is obviously unsuited for passengers and conventional transportation of property.[1]

Piedmont's italicized argument (p. 4) that its amended application sought "authority to carry *passengers*" over "*all* the routes described in the application," is entirely unsupported by the record. Not only is the application with respect to the

[1]Indeed, the Civil Aeronautics Board has held that the combination of pick-up and passenger service is unsafe and will not be authorized (*All American Aviation, Combination Service*, 8 C. A. B. 241, 242).

routes covered by the dotted lines on Chart 2 expressly limited by the language (App. 64) just quoted above, but it is fantastic to suggest that passengers were to be snatched from ground installations and hoisted into planes while dangling from the end of pick-up lines or that they were to be returned to the ground in a similar manner.

The application for pick-up service was entirely denied by the Civil Aeronautics Board (App. 565 [902]) and Piedmont did not appeal from this decision.

The only Piedmont application here involved is its application to carry passengers, mail and property in the conventional manner by stops at airports and this application is shown by the solid lines on Chart 2 of Piedmont's petition for writ of *certiorari*. Contrary to the statement in Piedmont's petition (p. 3, f.n. 1), Map No. 1 printed by the Court of Appeals in its opinion (676) contains exactly and precisely the solid lines shown on Chart 2 in Piedmont's petition.[1]

With this exposition of the actual facts, most of Piedmont's arguments are dispelled. It is perfectly plain, as the court below pointed out, that Piedmont's application for routes east of the

[1]The court below, in explaining the use of its maps, specifically pointed out that its Map No. 1 shows all of the routes over which Piedmont sought authority to transport passengers, mail and property pursuant to the only application upon which it went before the Board (679, f.n. 5). Piedmont's argument (p. 15) that the court below "assumed to modify the actual scope of the application by eliminating all points described therein except those for which Piedmont applied in the sense that it 'actively, by brief and by oral argument before the Board, sought,'" is an entirely improper characterization of the court's opinion. The court did limit the routes applied for by State, as explained, but the court's footnote attached to the very paragraph from which Piedmont purports to quote, indicates that, as far as Piedmont is concerned, its entire passenger application was incorporated in the court's Map No. 1. This is the fact and Piedmont's argument to the contrary finds no support in the record.

Appalachian Mountains, principally in a north and south direction, from Columbia, S. C., to Washington, D. C., and Norfolk, Va., bears no relation whatever to the routes found by the Civil Aeronautics Board to be required by public convenience and necessity in the case for which review is here sought. The latter routes ran almost entirely in an easterly and westerly direction and were stated by the Board to be required for the purpose of connecting southeastern cities such as Wilmington, Charlotte and Norfolk, with important centers west of the Appalachian Mountains, namely, Louisville, Cincinnati and Lexington[1] (App. 565 [867, 892-5]).

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[1]A few extracts from the Board's opinion on this score are significant (App. 565 [892]):

> "Our study of the record leads us to the conclusion that local service connecting cities in the Piedmont area with Louisville and Cincinnati is justified. There is also a need for a route between Cincinnati and Norfolk via various intermediate points, and a route from Roanoke to Danville, Greensboro, Raleigh, Fayetteville, and Wilmington.
>
> * * * * *
>
> "* * * Transappalachian railroad and highway crossings to the Piedmont and Coastal Plain areas from the west are particularly circuitous and inadequate and in order to cross the mountains it is necessary to travel on trunk-line routes via certain Virginia cities and Washington to the north and thence westward or via Atlanta to the south and thence to the west. Moreover, the existing transportation pattern leaves the region east of the mountains isolated from the west and important points within this region without adequate connections among themselves."

There is much more to the same effect (App. 565 [867, 892-5]). These findings were substantially a paraphrase of State's evidence (App. 99-100, 104; 115, 120; 122-8; 213-19).

(2) Whether or not Piedmont's application covered the transportation authorized, as required by the Civil Aeronautics Act, was a judicial question which the court below was plainly empowered to decide.

The statute under which the Civil Aeronautics Board proceeded in the present case is Section 401 of the Civil Aeronautics Act (52 Stat. 987, 49 U. S. C. §481). This section prohibits an air carrier from engaging in air transportation without a certificate from the Board. The section requires applications for certificates to be in writing, to contain such information as the Board, by regulation, may require and to be accompanied by proof of service upon interested persons. There are further provisions for giving public notice and specific notice to such other persons as the Board may direct. There is provision for opposition to applications. Subsections (d)(1) and (d)(2) of Section 401 provide:

> "(d) (1) The Board shall issue a certificate authorizing *the whole or any part of the transportation covered by the application*, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; *otherwise such application shall be denied*.
>
> "(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate *authorizing the whole or any part thereof* for such limited periods as may be required by the public convenience and necessity, if it finds that

> the applicant is fit, willing and able properly to perform such transportation and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder."

The regulations of the Board made pursuant to this statute (Amendment No. 3 of the Section 238.1 of the Economic Regulations, effective August 25, 1943, Fed. Reg. Vol. 8, No. 177, p. 12257-8) (1) provide for the execution of applications with due formality, including verification, (2) require the identification of each route for which a certificate is sought, specifying the type of service to be rendered and *naming "every terminal and intermediate point to be included in the certificate* for which application is made", and (3) require the inclusion of a map showing the routes applied for.[1]

Pursuant to this statute and these regulations, Piedmont filed its amended application on March 8, 1945 (App. 62-71) specifying the precise terminal and intermediate points with respect to which it sought a certificate for passenger, mail and property transportation (App. 69-70). This application was written in plain English and specified only the points appearing on Map No. 1, incorporated in the opinion of the court below

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[1]Piedmont's suggestion (p. 6) that the Civil Aeronautics Act does not require the application for certificate to specify "cities to be served or routes to be followed" is therefore without basis for the Act requires the application to "be in such form and contain such information * * * as the Board shall by regulation require" (Civil Aeronautics Act § 401[b], 52 Stat. 987, 49 U.S.C. § 481[b]). The wording of the Act likewise disposes of Piedmont's argument (p. 13) that the Board may, as a matter of discretion, decide in each case what the application is to contain and thus might properly decide in the present case that the Piedmont application, which did not specify at all the transportation certified, was in fact in compliance with the statute. The statute does not provide, as Piedmont urges, that the application shall be in such form and contain such information "as the Board shall require" (*i.e.* in each case), but specifies that the form and contents of the application are to be such "as the Board shall *by regulation* require".

(676); that is the basically northerly and southerly transportation east of the Appalachian Mountains.

On the basis of this application and the plain language of the statute which authorizes the Board only to "issue a certificate authorizing the whole or any part of the transportation *covered by the application*", the court below had no alternative but to decide that the certificate of public convenience and necessity had, as a matter of law, been issued erroneously to Piedmont.

There is no factual issue in this case as to the scope or extent of Piedmont's application.[1] It is set out in writing in this record. Its shortcomings to support the certificate issued, when measured against the statutory language, are so obvious that review here might well be denied, if for no other reason, on the ground that no question of any substance is presented. It is impossible to contend here that a certificate of public convenience and necessity covering service from Wilmington and

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[1]While Piedmont often states in its petition and brief (pp. 4, 5, 9; 12-3, 15-9) that the Board found as a fact that Piedmont was an applicant for the transportation applied for, there is no such finding of fact in the record. Indeed it is significant that while the Board in discussing other applicants called attention to routes requested, it pointedly refrained from doing so in the case of Piedmont (App. 565 [898-902]). The question of whether Piedmont was an applicant for the transportation certificated did not concern the Board at all when it made its original decision (at most Piedmont could contend that by the mere award of the certificate to it the Board assumed that Piedmont was an applicant), and, upon the reargument, the Board purported to decide the question purely as a matter of law. Thus, the order permitting reargument specifically limited that reargument to two questions (App. 591):

> "(a) whether the public interest requires the selection of State or Piedmont and (b) whether the Board committed legal error by awarding the route to Piedmont; * * *"

The Board's only decision as to the sufficiency of Piedmont's application to support the certification was in connection with resolving the second question, namely, whether any legal error had been committed (App. 614-7).

New Bern, N. C., and Norfolk, Va., to Cincinnati, O., and Louisville, Ky., is "the whole or any part of the transportation covered by the application" of Piedmont for service from Columbia, S. C., to Washington, D. C., and Norfolk, Va., or its additional route from Knoxville to Wilmington.

Indeed, no party seriously contended in the court below that the Piedmont application, in so far as it complied with the regulations in specifying all terminal and intermediate points, encompassed the transportation authorized. The principal contention had been that the introductory clause in the application should so broaden its scope that the Board could overlook the specification of routes and points entirely. The clause in question (App. 31) reads:

> "The Applicant * * * hereby applies for a * * * Certificate of Public Convenience and Necessity * * * for the authorization to engage in scheduled air transportation * * * *on the routes detailed herein*, or such modification of *such* routes as the Board may find public convenience and necessity require."

Whether this very limited clause[1] was sufficient in view of the language of the Civil Aeronautics Act and the Board regulations to transform Piedmont's application for north-south transportation into an application for east-west transportation between terminal points not covered by the Piedmont application at all, likewise, it is submitted, represented a judicial ques-

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[1]Petitioners now seek some comfort in the conclusion of the application which contains a general prayer for relief, including the stock phrase "for such other and further relief * * * as the Board may deem appropriate" (App. 41). This clause has never been held to be a substitute for required allegations in the application. It is wholly irrelevant to the issue here presented.

tion[1] which the court below very properly decided against Piedmont. Here, again, no factual issue is involved. The language of the application is plain. The court below was entitled to measure that language against the statutory requirements.[2] Indeed, Piedmont's argument that the construc-

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[1]Piedmont's statement (p. 7) that the court below treated the question of whether Piedmont was an applicant for the routes awarded as a "'fundamental question of fact'" is a misconstruction of the court's opinion. The court treated the fundamental question as one of law but, adverting to the argument advanced by Piedmont, said (681):

> "To be sure, the decision of what is or is not *a modification of a given set of proposed routes* is one which resolves itself in a fundamental question of fact and we recognize that it is not the function of this court to find fact or to substitute its judgment for that of the administrative tribunal on pure questions of fact concerning which opinions may reasonably differ. *However, that is not this situation.* We here rule, on the facts presented and uncontroverted, that no reasonable mind could conclude that the routes awarded in this case to Piedmont were merely a modification of the routes proposed by it. The implied finding by the Board that Piedmont was an applicant for the routes awarded lacks the support of any evidence, substantial or otherwise."

This is certainly a correct application of the law which requires no review here.

[2]Piedmont's suggestion (pp. 16-18) that the Civil Aeronautics Board had in the past treated clauses such as the modification clause in the Piedmont application as sufficient to justify certication of transportation not applied for at all, is entirely contrary to the Board's own precedents. Prior to the decision in the present case, the Board has repeatedly adhered to the proposition that requirements of fair hearing preclude the award to an applicant of routes not covered by his application no matter how broad a catch-all clause may have appeared in the application (the catch-all clauses in question were usually much broader than the "modification" clause here involved). See *e.g.*, *Trans-Southern Air., et al., Amarillo-Oklahoma City Op.*, 2 C. A. B. 250, 268-9; *Colonial Air et al., Atlantic Seaboard Op.*, 4 C. A. B. 552, 559; *North Central Case*, 7 C. A. B. 639, 674; *West Coast Case*, 6 C. A. B. 961, 997; *Panagra Terminal Investigation*, 4 C. A. B. 670, 673; *Texas-Oklahoma Case*, 7 C. A. B. 481, 520, see also 39 Op. Atty. Gen. 442, 444.

The *North Atlantic Routes Case*, 6 C. A. B. 319, cited by Piedmont (p. 17), is not in point for it involved foreign routes with respect to

tion of its application in the light of the statute was a matter solely in the discretion of the Board and not subject to judicial review, is a most flagrant extension of the type of argument specifically rejected, for example, in *Roberts v. United States*, 176 U. S. 221, 231, and *Wilbur* v. *Krushnic*, 280 U. S. 306, 318-9; see also *United States* v. *N. Y. Central R. R.*, 263 U. S. 603; vom Baur, *Federal Administrative Law* (1942), vol. 1 p. 437-8. It is certainly not in keeping with the provisions of Section 10 of the Administrative Procedure Act of 1946 relating to judicial review (60 Stat. 243, 5 U. S. C. § 1009 [e]).

(3) The repeated suggestion that there is anything in the decision below contrary to Chicago, St. P., M. & O. Ry. Co. v. U. S., 322 U. S. 1 (Piedmont's pet. pp. 7, 10; br. pp. 13, 21) is wholly unfounded.

Reference is apparently made to that portion of the *Omaha Railway* case in which it was decided that the Interstate Commerce Commision had the power to order an applicant (in a "grandfather" clause case) to serve certain *intermediate* points (which had previously been served by applicant) upon routes which had been specifically applied for but which points applicant, by amendment to its application, had indicated it did not wish to serve. Even if it be assumed that the Civil Aeronau-

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which the statute specifically permits the Board to issue certificates without designating terminal or intermediate points but designating "only the general route or routes to be followed". Neither in *Rocky Mountain States Case*, 6 C. A. B. 695, nor in the *North Central Case*, 7 C. A. B. 639, did the Board give any indication that it was issuing certificates on the basis of modification clauses rather than on the basis of points applied for. Certainly, the language of the Board in the *North Central Case* above cited is exactly contrary to Piedmont's contention.

tics Board has the same power,[1] and the court below made this assumption (681), no such question is here presented. This is not a situation in which additional intermediate points were added to a certificate or even a situation in which other points in the general vicinity of the routes applied for were added. In this case, in direct violation of the Civil Aeronautics Act above quoted, the Board awarded to Piedmont a certificate for transportation not covered by its application at all; awarded to it a pattern of routes not covered by its application at all and changed the entire character of the operation covered by Piedmont's application. This, we may add, was done contrary to the recommendation of the Board's trial examiners and contrary to the recommendation of its own public counsel (Recommendations for State: App. 514-6, 521-2; 535-7, 549, 550; Recommendations for Piedmont: App. 518-9, 520, 549). What happened in the Civil Aeronautics Board is very plain from this record. The Board found that public convenience and necessity did not require the north-south transportation from Columbia, S. C., to Washington, D. C., and Norfolk, Va., applied for by Piedmont and then for some wholly capricious reason, without notice to anyone, awarded to Piedmont the precise routes for which State had applied and with respect to which State introduced all of the evidence—routes in which Piedmont had not, prior to the decision by the Board, evinced the slightest interest.

Piedmont's argument, based on the contention that it "was earnestly and vigorously requesting the Board to issue to it a certificate in the identical form in which it was finally issued"

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[1] It should be noted that the statutory provision (Section 208 [a] of the Interstate Commerce Act, 49 U.S.C. 308[a]), upon which the Court relied in the *Omaha Railway* case (322 U.S. at p. 4), included a phrase omitted from a somewhat similar provision in the Civil Aeronautics Act (§401[f]), viz., the right to attach to a certificate terms "including terms, conditions and limitations as to the *extension* of the route or routes of the carrier".

(p. 15), is unsupported by a single record citation and is unsupportable. It was not until after the original decision of the Board presented to Piedmont a wholly unexpected windfall that Piedmont made any request for the issuance of a certificate covering the transportation here certified. Thereafter, to be sure, it has sought, with dogged cupidity, to hold that which originally it never sought to have.

Piedmont's suggestion (p. 7, 14, 20) that the extraordinary award made by the Civil Aeronautics Board should not have been reversed by the court below because Section 401(f) of the Civil Aeronautics Act permits the Board to attach "to the exercise of the privileges granted by the certificate, * * * such reasonable terms, conditions, and limitations as the public interest may require", stretches the language just-quoted beyond all reasonable bounds. It is impossible to argue that Congress, by permitting the Board to attach reasonable terms, conditions and limitations to the exercise of the privilege certified, intended in any way to alter or amend the basic provision of the law which limited the Board's right and duty to issue any certificate whatever to "the whole or any part of the transportation covered by the application" (§ 401[d] of the Act).

If Piedmont's construction is to be adopted, not only is the express limitation set upon the Board's power to be disregarded but the provisions for notice (Civil Aeronautics Act, § 401[b]) become a travesty. If an application for northerly and southerly routes principally between Washington, D. C., and Columbia, S. C., gives notice to other applicants and public counsel of ambitions to operate between Norfolk and Cincinnati, or Wilmington and Louisville, then the provisions for notice are wholly meaningless. If such is to be the construction of the Civil Aeronautics Act and the procedure thereunder, then what becomes of the requirement that the right to an adminis-

trative hearing "embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them" (*Morgan* v. *United States*, 304 U. S. 1, 18)? And what becomes of the requirement, as the Administrative Procedure Act of 1946 puts it, that interested parties "be timely informed of * * * the matters of fact and law asserted" (Administrative Procedure Act, § 5, 60 Stat. 239, 5 U. S. C. § 1004)?

(4) The suggestion that there should be a modification of the order of the court below permitting Piedmont to retain routes east of the Appalachian Mountains, calls for a reversal of the Board's factual determination as to which routes were required by public convenience and necessity.

Piedmont's suggestion (p. 9, 26-8) that it should be allowed to operate a part of its routes, seeks a judicial reversal of the Board's finding that the transportation required by public convenience and necessity had to connect points west of the Appalachian Mountains, that is, Louisville and Cincinnati with points east thereof, such as Wilmington, Norfolk, New Bern and intermediate points (App. 565 [892-6]). There is no finding in this record that public convenience and necessity requires local service exclusively east of the Appalachian Mountains. The finding is to the contrary (App. 565 [982-6]). Indeed, the rejection by the Board of Piedmont's application for such service demonstrates that public convenience and necessity does not require it. This Court surely will not substitute its own judgment for that of the Board upon a question so peculiarly within the Board's province. If, as the court below held, Piedmont is not entitled to a certificate for service connecting points west of the Appalachian Mountains with those east thereof, it is plainly not entitled to any certificate at all on the present record. No modification of the judgment below is possible.

(5) The court below was also correct in holding that the certification of Piedmont was arbitrary and capricious in that there was no evidence to support Piedmont's fitness, willingness and ability to operate the routes in question.

As the court below was so clearly correct in its decision that Piedmont was not within the statute an applicant for the transportation certificated to it, it seems hardly necessary to consider the purely incidental (though equally correct) conclusion that the Board action was arbitrary and capricious because there was no evidence of Piedmont's fitness, willingness and ability to conduct the transportation in question.

The Board itself has laid down the general standards whereby it judges whether an applicant is "fit, willing, and able" to perform the transportation in question as required by the statute (Civil Aeronautics Act, § 401 [d]). The applicant must have "(1) a proper organizational basis for the conduct of air transportation; (2) a plan for the conduct of the service made by competent personnel; (3) adequate financial resources".[1] In addition, the Board has laid down rules to guide it particularly in cases such as the present one involving local service. In *Investigation of Local, Feeder, and Pick-up Air Service*, 6 C.A.B. 1, the following requirements were set out (p. 4):

> "With respect to showing a justifiable expectation of success at a reasonable cost to the Government, it will be incumbent upon *each applicant to meet the test* of public convenience and necessity *by showing* a need for the service, the probable use that will be made of it, the effect on existing air services, and a cost to the Government in mail compensation bearing a reasonable

[1] See *Braniff Airways v. Civil Aeronautics Board*, 79 U.S. App. D.C. 341, 342, 147 F. 2d 152, 153.

> relationship to these elements and to the character and quality of the service proposed."

There is no dispute that in the present case Piedmont did not offer one scintilla of evidence relating to the east-west transportation certified. It presented no plan whatever "for the conduct of the service" covered by the certification. As to such service, it presented no schedules, no plan for the utilization of airports, no weather data, no time saving data, no plans for the use of radio guides, no data as to the traffic potential of the service, as to its effect upon existing airlines, and as to the cost to the Government in mail compensation of the service to be rendered.[1] On the contrary, Piedmont's evidence relating to operation with a single engine plane (which had never received an air-worthiness certificate for commercial passenger transportation) (Piedmont's Exh. 50, App. 368; 460), and its plans for day contact flight (App. 368), without radio instrument operation precluded operation, over the routes certificated (684). In the court below, Piedmont conceded that the Board in its finding as to Piedmont's fitness, willingness and ability had not applied its usual standards (Piedmont's Brief below, p. 22):

> "In some previous decisions the Board applied three tests in determining an applicant's fitness, willingness, and ability. These were: (1) a proper organizational basis; (2) a plan for the conduct of service made by competent personnel; and (3) adequate financial resources. [citation] These tests were *not* specifically applied by the Board in determining Piedmont's fitness, willingness, and ability."

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[1]With respect to the transportation certificated, the only evidence relating to any of these points was furnished by State (State's Exhs. 3-66, App. 72-204).

The court below, on the record, came to the only possible conclusion when it said (684):

> "In the instant case, we have presented the still stronger situation wherein, even at the time of the Board's finding that Piedmont was fit, willing, and able, there was *no* evidence of Piedmont's appropriate qualification for the awarded routes. We find the record before us barren of any evidence put in by Piedmont to show its fitness, willingness, or ability to operate west of the Appalachians or over mountainous terrain. In fact, Piedmont's evidence was to the contrary" (Italics in the original opinion though not in the reprint furnished by the Board to this Court).

Piedmont's suggestion that this is an unfounded conclusion because the Board, with its specialized wisdom, might overlook the lack of all relevant data, and base its decision upon a plan of sorts presented by Piedmont to operate single-engined planes without radio communication between Columbia, S. C., and Washington, D. C., as well as the few other points involved in its basically northerly and southerly scheme of operation, is fantastic on its face. The question is not whether Piedmont had some plan for operation but whether it had "a plan for the conduct of *the* service"—obviously, the service to be certificated. For such service it offered no plan and had none. In its petition Piedmont points to no evidence which could support a finding that it had shown itself fit, willing and able, in the light of the criteria established by the Board, to operate the transportation certificated to it.

Piedmont's further contention that the question of its fitness, willingness and ability was not subject to court review because there was no challenge thereof before the Board (p. 23), is likewise unsupportable by the record. Immediately upon the

Board's announcement of its surprising decision[1] awarding to Piedmont that for which State had applied, State filed a petition for reargument in which it plainly asserted (App. 566 [38]):

> "Consequently, it is impossible to consider Piedmont fit, willing and able for the routes awarded to it."

Amplifying the petition upon oral argument, counsel for State said (App. 602):

> "Turning now to the next important element in fitness, willingness, and ability, namely, 'a plan for the conduct of the service made by competent personnel'. It is on this phase of the case that we believe Piedmont completely falls down."

Much detailed argument followed (R. 16626-36) and counsel for State concluded (R. 16636):

> "On the other hand, Piedmont showed no plan for the operation of these routes, demonstrated no appreciation of scheduled air transportation matters * * * nor did it have financial and cost exhibits relating either to these routes or the character of operation which the Board intended."

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[1]Such a decision had not been expected by anyone for not only had Piedmont not applied for the routes in question but it had not even filed exceptions to the Examiners' Report to indicate that it was a candidate therefor (App. 533-4); it had not requested them in its brief (App. 538-48) and, indeed, at the hearings Piedmont had plainly indicated a lack of interest in anything other than the route covered by its application (App. 470). As the court below concluded (681):

> "Piedmont having taken this position before the Board, it is not difficult to believe that Piedmont was the most surprised applicant of all when the Board announced its decision awarding Piedmont routes which are certainly not 'along' Piedmont's 'proposed routes' and routes which certainly do 'materially upset' Piedmont's 'plan of operation.' "

CONCLUSION

Neither the Board nor Piedmont present to this Court any important questions for review. This is fundamentally a controversy between State and Piedmont relating to whether Piedmont should be entitled to have the advantages of State's application before the Board, should obtain the benefits of all of State's evidence, all of State's plans and all of State's expenditures and years of work in preparing the data upon which the Board issued the certificate to Piedmont. The court below has held as a matter of law that Piedmont is not entitled to the certificate which the Board issued upon the basis of the application and evidence of State. This involves no great public issue.

The decision below, while holding that the Board must act within the statute which limits its right to issue a certificate to the whole or any part of the transportation applied for, does not unduly restrict the Board. The decision specifically permits the Board all latitude which can possibly be inferred from the statutory language used. It permits the Board to certify to an applicant intermediate points along routes applied for and even adjacent points when reasonably connected with the application actually made (681).

Beyond that, and untouched by the decision in this case, is the conceded power of the Board, after a certificate has been issued, upon compliance with Section 401 (h) of the Civil Aeronautics Act (49 U. S. C. § 481 [h]), "after notice and hearing", to alter, amend, modify, or suspend any such certificate, in whole or in part upon the conditions stated in the statute. The exercise of this power upon adequate notice to all interested persons is ample to permit the Board to effectuate any powers of certification conferred upon it by Congress. It is very different from the power which the Board arrogated

unto itself in the present case where, without notice and without hearing *qua* the certification to Piedmont, it awarded to one who had not applied at all for the system of transportation certificated, the certificate of public convenience and necessity to which another applicant was plainly entitled. Indeed, the only question of any importance in this case, it is respectfully submitted, is the one raised in the cross-petition (No. 158) relating to the inadequacy of relief accorded to State by the court below.

The petitions for writs of *certiorari* in numbers 157 and 159 should be denied.

Respectfully submitted,

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Of Counsel

August 6, 1949

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 157

CIVIL AERONAUTICS BOARD,

Petitioner,

v.

STATE AIRLINES, INC.

Respondent.

No. 158

STATE AIRLINES, INC.

Cross-Petitioner,

v.

CIVIL AERONAUTICS BOARD and PIEDMONT AVIATION, INC.,

Cross-Respondents.

No. 159

PIEDMONT AVIATION, INC.,

Petitioner,

v.

STATE AIRLINES, INC.

Respondent.

BRIEF OF STATE AIRLINES, INC.

FREDERICK W. P. LORENZEN,
Counsel for State Airlines, Inc.

PHILIP SCHLEFF,
Of Counsel.

November 15, 1949

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

CIVIL AERONAUTICS BOARD, *Petitioner,* v. STATE AIRLINES, INC., *Respondent.*	No. 157
STATE AIRLINES, INC., *Cross-Petitioner,* v. CIVIL AERONAUTICS BOARD and PIEDMONT AVIATION, INC., *Cross-Respondents.*	No. 158
PIEDMONT AVIATION, INC., *Petitioner,* v. STATE AIRLINES, INC., *Respondent.*	No. 159

BRIEF OF STATE AIRLINES, INC.

Preliminary Statement

This case is here on writs of *certiorari* to the Court of Appeals for the District of Columbia Circuit. The decision below is not yet officially reported but is unofficially reported in 174 F. 2d 510, under the title of *State Airlines* v. *Civil Aeronautics Board* and appears in the printed record at p. 675.

The substantive portion of the decision below was in favor of State Airlines, Inc. (hereinafter referred to as "State"). The Court of Appeals decided, on State's petition for review of Civil Aeronautics Board orders, that Piedmont Aviation, Inc. (hereinafter referred to as "Piedmont"), had not filed an application for the transportation covered by the certificate of public convenience and necessity awarded to it by the Civil Aeronautics Board (hereinafter referred to as the "Board"), and that the Board, accordingly, had no power under the statute to certificate Piedmont.

The Board, in No. 157, and Piedmont, in No. 159, petitioned for writs of *certiorari*.

State's cross-petition (No. 158) is addressed to the failure of the court below to make an order* requiring the Board to issue to State the certificate to which, in view of the findings of fact, it was entitled under the mandatory provisions of Section 401 of the Civil Aeronautics Act.**

Pertinent statutory provisions and Board regulations are annexed hereto as Appendix A.

Basis for Jurisdiction

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1). The decision and judgment, to which the writs of *certiorari* in this proceeding are directed, were entered on April 6, 1949. The cross-petition for writ of *certiorari* was filed on July 2, 1949. This Court granted the cross-petition on October 10, 1949.

State's cross-petition is addressed to that portion of the decision below in which the court held (R. 686),*** in spite of Section 10(e) of the Administrative Procedure Act of 1946,

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*See Section 10(e) of the Administrative Procedure Act of 1946; 60 Stat. 243; 5 U. S. C. § 1009(e); Appendix A, p. X, *infra*.

**52 Stat. 987; 49 U. S. C. § 481; Appendix A, p. II, *infra*.

***This type of citation is to the printed record.

that it lacked "power to order the issuance of a certificate which the Board has declined to issue", even assuming that the Board had "already made the requisite findings which would entitle State to a certificate". The court attributed its impotence in this regard to *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134.

This determination presents (a) a question of general importance, and (b) a question of substance relating to the construction of a statute of the United States. These matters have not been passed upon by this Court but should be settled by its decision. The construction of Section 10(e) of the Administrative Procedure Act and the interpretation of *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, in the light of that act, particularly call for determination by this Court.

Statement of the Case

This case involves the certification under Section 401 of the Civil Aeronautics Act of passenger, mail and property service by plane from the Coastal and Piedmont region of Virginia and the Carolinas westerly across the Appalachian Mountains to the industrial Ohio River Valley of the middle west (see maps in the opinion below,* R. 676).

The routes included in State's application (R. 20-3) upon which State went before the Examiners and the Board (R. 508-9) extended from Norfolk, Va. and New Bern-Morehead City and Wilmington, N. C., in the east to Cincinnati, O., and Louisville, Ky., in the middle west. These are the routes for which the Board found public convenience and necessity and which it then certificated to Piedmont, although the latter had not applied for such routes at all.

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*These maps, with the original legends used by State in the court below, are reproduced herein as Appendix B, pp. XVI-XVII, *infra*.

A. State's Application and Evidence.

On October 21, 1941, State filed with the Civil Aeronautics Board its original application for a certificate of public convenience and necessity authorizing local mail, passenger and property transportation connecting points in southeastern United States with points across the Appalachian Mountains in the Ohio River Valley and the Great Lakes Basin (Tr. 16740).* The Board, for one reason or another, postponed consideration of State's original application for some years.** As a result of Board action, State filed various other applications all of which, however, retained the basic east-west route system connecting southeastern points with the Ohio Valley cities across the Appalachian Mountains (R. 1-26). As the Board awarded the routes which had been applied for by State to others, State's chances of success became more local and restricted. State finally went to the hearings here involved before the Board's trial examiners on the basis of the route system above described connecting the Coastal and Piedmont regions of the Carolinas and Virginia with terminal points of Cincinnati and Louisville on the western side of the Appalachian range (R. 508-9; see maps, R. 676 and App. B, pp. XVI-XVII, *infra*).

At the hearings conducted by the examiners, State introduced voluminous exhibits intended to prove that public convenience and necessity required the routes applied for and that State was fit, willing and able to serve these routes. The exhibits set forth the economic strength and resources of terri-

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*This type of citation is to the unprinted certified transcript of record to which the parties, pursuant to stipulation, may make reference (R. 689).

**See *Colonial Air. et al., Atlantic Seaboard Op.*, 4 C. A. B. 392, 399-400, and *Eastern A. L. et al., Great Lakes-Florida*, 6 C. A. B. 429, 452-4.

tory to be served (State's Exhs. 3-11, R. 72-3, 115-9), the existing and proposed transportation facilities in this territory (State's Exhs. 12-18, R. 73, 120-34), data relating to airmail and first class mail in this territory (State's Exhs. 19-21, R. 73-4, 134-7), the traffic potential in the territory (State's Exhs. 22-31, R. 74, 137-40), plans for operation with approved multi-motored aircraft, including proposed schedules, revenue estimates, cost estimates, airmail estimates, detailed weather and airport data, and a tremendous amount of other data relating to the proposed operations and State's fitness and ability to operate over the routes in question (State's Exhs. 32-66, R. 75-7, 140-204), maps (State's Exhs. 67-71, R. 77, 204) and miscellaneous matters (State's Exhs. 76-82, R. 78, 206-20). All emphasized and amplified State's application for routes from Virginia and the Carolinas west across the mountains to the cities in the Ohio River Valley.

Thus, in its narrative statements introducing exhibits to show that public convenience required the routes in question, State said (R. 115):

> "Largely because of the nature of the Appalachian mountain range, which lies athwart this region in a north-east and south-west direction, and of the peculiarities of its drainage, land routes of travel and traffic developed predominantly in directions parallel to the mountains. This situation has left the Piedmont area of the Southeast, lying next to the mountains, with highly inferior connections both with the area lying west of the mountain range and with the Seaboard cities to the East and Southeast. *Since the proposed routes of State Airlines are largely designed to rectify this condition,** the population figures and the figures for economic characteristics of the entire area to be served are

*Emphasis ours throughout unless otherwise indicated.

presented by regional sub-divisions of the entire area as follows:

* * *

(R. 120):

> "The large degree of isolation of the cities of the Piedmont from one another and from both cross-mountain and seaboard points is revealed by statistics of existing transportation facilities in the area. . . .
>
> "Existing surface transportation across the mountains is so circuitous and so slow as to make State's proposed times by air seem phenomenally low when compared with the best one can do by surface carrier. . . ."

Consequently, the routes proposed by State were "predominantly * * * at right angles to the Appalachian Mountain Range" (R. 245) and their "main purpose" was "to provide a hitherto unfilled need for trans-mountain transportation" (R. 234). The need for such service was emphasized by State's economic expert who amplified the geographical difficulties created by the Appalachian Mountain Range and demonstrated the inability of surface transportation to meet the need of communication between cities such as Cincinnati and Louisville and the southeastern cities on the other side of the mountains (R. 213-20). The problem as this witness saw it was "one of a region, isolated from another important region, and without important traffic channels" (R. 217) and the witness was of the opinion that (R. 217):

> "Between the midwest and the southeast there ought to be and there are strong bonds of economic interest that need little for their development except physical means of communication."

Other evidence presented by State dealt with its fitness, willingness and ability to operate over the routes applied for, its

history and its financial ability (R. 79-109; State's Exhs. 72-5, R. 204-6; State's Exhs. 60-6, R. 189-204; R. 221-44; 248-77).

A detailed description or consideration of this evidence is unnecessary for the Board resolved all factual questions to which this evidence was addressed in State's favor by finding that State was fit, willing and able to operate as required by the statute and that the routes here involved for which State had applied were required by the public convenience and necessity (R. 565 [888, 892-3, 895-6, 901-2]; R. 612).

B. Piedmont's Application and Evidence.

Some three years after State's original application was filed, Piedmont, on June 2, 1944, filed its first application with the Board (R. 31-41). By this application, it sought a certificate to carry on a combined mail, passenger and property service with pick-up service* over routes having no particular axis but constituting a very local network covering nearly all towns in North Carolina and a substantial number of towns in South Carolina and Virginia (*ibid.*). Piedmont's proposed routes extended slightly into Georgia, Maryland, Tennessee and Virginia and one route extended through West Virginia along the Ohio River Valley to Cincinnati.

Before any hearings were held on Piedmont's application Piedmont, on March 8, 1945, by amendment abandoned it (R. 62-70). Apparently anticipating the Board's decision referred to in the footnote below, that a combination of pick-up

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*"Pick-up Service" is service of points without stops whereby mail is picked up from a ground installation by a device on the plane, while in flight (*All American Aviation, Pick-up, Delivery Service*, 2 C. A. B. 133, 137, fn. 3). This service needs no airports except the termini and is obviously unsuited for passengers and conventional transportation of property. The Civil Aeronautics Board has held that the combination of pick-up and passenger service is unsafe and will not be authorized (*All American Aviation, Combination Service*, 8 C. A. B. 241, 242).

and passenger service is unsafe and would not be authorized, Piedmont separated its amended application into two distinct parts (R. 64-70). It sought authority to transport mail, express and property using the pick-up method on most of the routes requested and entirely separate and distinct authority to transport mail, passengers and property in the conventional manner on different proposed routes (R. 64-70).

By this amendment, Piedmont expressly limited its application to carry passengers, mail and property in the conventional manner to routes designed to connect points *east* of the Appalachians with other points on the *same* side of the mountains, running (1) from Washington, D. C., to Hagerstown, Md., then through the Shenandoah Valley to Roanoke, Va., and ultimately to Columbia, S. C., and other South Carolina points; (2) from Norfolk, Va., to Roanoke, Va., and (3) from Wilmington, N. C., to Knoxville, Tenn. (R. 69-70; see map, R. 676 and App. B, p. XVI, *infra*).

The only passenger routes applied for by Piedmont (R. 69-70), aside from some very local service mostly in the Carolinas, thus had a predominantly north and south axis paralleling existing surface transportation facilities and were intentionally confined to the area east of the main Appalachian range (R. 416-8, 489; R. 676; State's Exh. 82, R. 215). Even the one route leading into the mountains, that is the one to Asheville and Knoxville, paralleled the only existing surface transportation in that direction (R. 213-4; R. 432).

As Piedmont pointed out in one of its briefs before the Board's examiners (R. 489) "The passenger routes proposed by Piedmont are along routes of established movement as shown by highway and rail figures."

Indeed, by reason of the type of service which Piedmont proposed to render, its counsel emphasized in argument before

the Board the non-mountainous character of terrain covered by Piedmont's principal passenger route, stating (R. 553):

> "Consider how this route as proposed by Piedmont connects Charlotte with its secondary centers, both north and south, and how north of Winston Salem it follows the Shennandoah [sic] Valley, crossing the Blue Ridge Mountains *at only one point, the southernmost end of those mountains where they are very low.*"

Even Piedmont's application for pick-up service (R. 64-9), which has no relevancy in this controversy relating to passenger, mail and property certification, abandoned any pretense of connecting southeastern points with the Ohio Valley cities across the Appalachian Mountains, although one insignificant segment of the proposed pick-up web did reach Charleston, W. Va. (R. 64-9).

Piedmont did not propose to fill the need for cross-mountain transportation between Cincinnati and Louisville in the Ohio Valley and the southeastern cities of Virginia and North Carolina. It sought merely to supplement existing surface transportation east of the mountains and to serve, as its expert witness said, "The general trend of movement * * * in this region, [which] is towards the *northeast* where the great centers of population and of industry are found" (R. 418).*

The prosecution of Piedmont's application was strictly limited to its application (R. 283-474). Piedmont introduced no evidence as to public convenience and necessity for transportation between the Carolinas and Virginia and Ohio River Valley points. It introduced no evidence as to its fitness or

---

*It is not without significance, to prove that Piedmont did not deem itself an applicant for the routes covered by State's application, that Piedmont employed the same economic expert who had testified for State in support of its application (R. 212 and 416).

ability to operate such transportation. It offered no plan for such operation. It introduced no schedules and no evidence of financial ability to operate such routes. It furnished no estimates as to mail pay subsidy which it would require to operate the routes certificated. It made no cost estimates based upon the operation of multi-motored aircraft which would be required over the mountainous terrain in question but limited all its evidence to a proposed single-engined aircraft* (R. 368) to be operated on its north and south routes which, as its counsel emphasized, avoided the mountains (R. 553). For the same reason its plan of operation did not call for the utilization of radio guides (*cf.* R. 156-8, 221-2 with R. 378-80) and contemplated only daylight contact flight over the relatively level ground to be encountered (R. 368, 442).

As the court below concluded (R. 684):

> "In the instant case, we have presented the still stronger situation wherein, even at the time of the Board's finding that Piedmont was fit, willing, and able, there was *no* evidence of Piedmont's appropriate qualification for the awarded routes." [Emphasis in original although not in reprint in this record; see also 174 F. 2d at p. 517.]

C. The Disposition of the Case Made by the Board.

The evidence submitted by State and Piedmont to which reference has above been made was finally submitted to the trial examiners at hearings held in the summer of 1945 in a proceeding which, pursuant to Board order (R. 27), consoli-

*The aircraft proposed was a single-engined Noorduyn Norseman V (R. 368) which at the time of the hearings before the Board (R. 460) and, indeed, to the present time, has never received an air-worthiness certificate for scheduled passenger operation. Contrast this with State's plans based upon the standard air line Douglas DC-3 plane to be operated in accordance with accepted practice (R. 105-9, 221-2).

dated all of the applications then on file with the Board relating to the entire southeastern portion of the United States.

After consideration of all of the evidence, the examiners in their report concluded that State's proposal was to be recommended (R. 508-11, 513-6, 521-2). The report discussed the barrier which the Appalachian Mountain Range had presented to the development of transportation facilities in an easterly and westerly direction in the area proposed to be served by State (R. 508-9). The examiners commented upon State's fitness, willingness and ability to conduct the transportation in question, about its choice of DC-3 planes, its cost statistics and other evidence presented in that connection (R. 509-11, 514). After disposing of the applications of several other companies which had sought certificates in the general area, the examiners concluded that State should be recommended to conduct certain operations in the Carolinas and should be awarded the route across the mountains to Louisville, Ky. (R. 515-6, 521-2).

The examiners found that "the record shows a need for substantially all of the routes proposed by State" (R. 514). But they did not recommend certification of all the routes either to State or, indeed, in some instances to anyone (see R. 514-6, 519-24).

The examiners awarded to Piedmont a part of its predominantly north and south route paralleling the mountains from Winston-Salem to Washington and the branch route from Roanoke to Norfolk in Virginia (R. 518-9, 520).

State, Piedmont and Public Counsel (as well as other participants in the hearings) filed exceptions to the examiners' report. State excepted generally to the failure of the examiners to recommend its entire integrated system of east-west routes and excepted specifically to the failure to recommend for

State the route from Cincinnati to Norfolk, Louisville to Norfolk and Charlotte, N. C., to Chattanooga, Tenn. (R. 528-31). Public Counsel sided substantially with State in connection with these exceptions (R. 535-7, 549, 550).

Piedmont's exceptions dealt only with the failure to extend its north-south route southerly from Winston-Salem to Chester and Camden and to the failure to recommend its route from Wilmington, N. C., to Asheville and Knoxville, Tenn. (R. 533-4).* It filed no exceptions relating to the trans-Appalachian service here involved.

Upon argument before the Board, no one, least of all Piedmont, took the position that Piedmont should be awarded the certificate for the trans-Appalachian transportation covered by State's application (R. 551-64).

Upon this record and upon these contentions the Board found in substance that public convenience and necessity required the certification of the very routes for which State had applied, found that State was fit, willing and able to serve these routes (R. 612), but awarded the certificate therefor entirely to Piedmont.

Thus, the Board concluded, almost in the exact language of State's evidence (R. 565 [892**]):

> "Our study of the record leads us to the conclusion that local service connecting cities in the Piedmont area with Louisville and Cincinnati is justified. There is also a need for a route between Cincinnati and Norfolk via various intermediate points, and a route from Roanoke to Danville, Greensboro, Raleigh, Fayetteville, and Wilmington.
>
> * * *

*Piedmont's exception (R. 534) to the failure to recommend it for a "pick-up" service certificate is not here material.

**As the Board's decision has been bound into the record at page 565 thereof, the page citations apply likewise to the Board's reported decision in 7 C. A. B.

"This evidence shows the lack of sufficient main arteries of traffic in an east-wind direction, ...

* * *

"Transappalachian railroad and highway crossings to the Piedmont and Coastal Plain areas from the west are particularly circuitous and inadequate * * * Moreover, the existing transportation pattern leaves the region east of the mountains isolated from the west and important points within this region without adequate connections among themselves."

The Board then discussed (R. 565 [893]) the evidence furnished by State (R. 120-8) to indicate in detail the inadequacy of rail service in an easterly and westerly direction between trans-Appalachian points and the Piedmont. The Board further elaborated to a considerable extent on the establishment of service between the Piedmont area and Louisville and Cincinnati and commented on the "strong community of interest", between Louisville and the cities in the Piedmont as well as the "substantial community of interest * * * between Cincinnati and Norfolk" (R. 565 [893, 894-5]).

Concluding as required by the statute that public convenience and necessity required the east-west transportation here involved (R. 565 [895-6]), the Board turned to the selection of the carriers to be certificated. The Board rejected summarily the applications of six companies seeking certificates for local service. It then concluded (R. 565 [901]):

"The choice has thus narrowed down to State Airlines and Piedmont Aviation, and which of these two companies should be selected to conduct the proposed service presents a close and difficult question. Both have engaged in various phases of aeronautics for a period of years.

* * *

> "Each applicant has shown an adequate financing program, and each has demonstrated an energetic interest in the conduct of the operations."

The Board selected Piedmont principally because it had conducted certain pilot training programs and had engaged in other fixed base activities, whereas State had concentrated on charter operations and thus did not have as large a staff. The Board added, however, that there was no doubt that State could obtain the requisite personnel but the Board was of the opinion that inauguration of service might take State somewhat longer* (R. 565 [902]).

State thereupon filed its petition for rehearing (R. 566) specifically contending that the Civil Aeronautics Board could not legally certify Piedmont because it did not meet the requirements of the Civil Aeronautics Act in that (a) Piedmont had not applied for the routes awarded to it;** (b) it had not furnished any evidence or plan for such transportation and had failed to demonstrate its fitness as a scheduled carrier in many other respects, and (c) the certification of Piedmont violated due process of law for no notice had been given to anyone that Piedmont was to be considered an applicant for the trans-Appalachian routes awarded to it.

The Civil Aeronautics Board, however, adhered to its original decision (R. 610), but in so doing emphasized that it had

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*The Board's decision was made on April 4, 1947, six years after State's original application. The sudden emphasis upon speed in commencing operation is hard to understand even if the Board's conclusion in this respect had been correct (a conclusion which State contends was baseless).

**The statute under which the Board purported to act limits the Board's power to the issuance of a certificate "authorizing the whole or any part of the transportation *covered by the application* * * *" (49 U. S. C. § 481[d][1], [2]; 52 Stat. 987; App. A, pp. II-III, *infra*).

found State fit, willing and able to conduct the transportation in question. Thus, the Board said (R. 612):

> "State's ability to build up a qualified organization is not questioned. That it could do so was implicit *in the finding that the carrier was fit, willing, and able.*"

D. The Reversal by the United States Court of Appeals for the District of Columbia Circuit.

Upon appeal by State, the Court of Appeals (Judge Edgerton dissenting without opinion) reversed the Board's determination (R. 675).

The court stated that its decision depended "upon the answers which must be given the following two questions: (1) was Piedmont, at the time of the Board's decision, an applicant for the routes it was ultimately awarded; and (2) if not, can the Board award a certificate to one who was not an applicant for the routes authorized by that certificate?" (R. 679). The court answered both questions in the negative (R. 686). In considering the second question the court incidentally ruled that the Board's findings, as to Piedmont, were arbitrary and capricious and lacked the support of substantial evidence (R. 686). Indeed, as to the Board's conclusion that Piedmont was fit, willing and able to operate the routes certified, the court held that such conclusion was "not only unjustified on the basis of the record, but unjustifiable" for "there was no evidence of Piedmont's appropriate qualification for the awarded routes" (R. 683, 684). Accordingly, the court reversed "the decisions of the Board insofar as they resulted in the granting of a certificate to intervenor herein, Piedmont" (R. 686).

The remand of the case to the Board was "for further proceedings not inconsistent with this opinion". (R. 686).

The court below specifically denied State's request made pursuant to Section 10(e) of the Administrative Procedure Act of 1946* for an order compelling the Civil Aeronautics Board to issue a certificate of public convenience and necessity, either temporary or permanent, to State. On this score, the court said (R. 686):

> "Petitioner, State, also asks that this court reverse and remand to the Board with instructions to issue a certificate to State. Whether or not it is so that the Board has already made the requisite findings which would entitle State to a certificate, we agree with respondent that this court lacks the power to order the issuance of a certificate which the Board has declined to issue. We do not read the allegedly pertinent section of the Administrative Procedure Act with its mandate that this court shall 'compel agency action unlawfully withheld,' [Section 10(e), 60 Stat. 243 (1946), 5 U. S. C. § 1009(e) (1946)] as requiring that result. On the contrary we regard ourselves bound in this respect by the decision of the Supreme Court in Federal Communications Commission v. Pottsville Broadcasting Co. [309 U. S. 134, 60 Sup. Ct. 437, 84 L. Ed. 656 (1940)]."

It is this portion of the decision below which is the subject matter of the present cross-petition.

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*60 Stat. 237, 243, 5 U. S. C. § 1009(e); App. A, p. X, *infra*. This section provides that a court having jurisdiction to review the action of an administrative agency "shall (A) compel agency action unlawfully withheld or unreasonably delayed" as well as "(B) hold unlawful and set aside agency action, findings, and conclusions found to be" arbitrary, capricious, contrary to law, including constitutional provisions, lacking in proper procedure required by law, unsupported by substantial evidence, or unwarranted by the facts.

Specification of Errors Intended to Be Urged in No. 138

The United States Court of Appeals for the District of Columbia Circuit

1. erred in refusing to make an order compelling the Civil Aeronautics Board to issue to State a certificate of public convenience and necessity, either permanent or temporary, for the transportation found by the Board to be necessary for the public convenience;

2. erred in holding and adjudging that it lacked the power to make an order compelling the Civil Aeronautics Board to issue to State a certificate of public convenience and necessity, either permanent or temporary, for the transportation found by the Board to be necessary for the public convenience;

3. erred in holding and adjudging that Section 10(e) of the Administrative Procedure Act of 1946 [60 Stat. 243; 5 U. S. C. § 1009(e)] did not empower it to make an order compelling the Civil Aeronautics Board to issue to State a certificate of public convenience and necessity, either permanent or temporary, for the transportation found by the Board to be necessary for the public convenience;

4. erred in holding and adjudging that *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, applied to the instant case and was a binding adjudication that the United States Court of Appeals lacked power to make an order compelling the Civil Aeronautics Board to issue to State a certificate of public convenience and necessity, either permanent or temporary, for the transportation found by the Board to be necessary for the public convenience;

5. erred in holding that it did not have power in a case where the Civil Aeronautics Board had exercised all discretion entrusted to it by the applicable act of Congress to make an order compelling such administrative agency to issue to State the certificate of public convenience and necessity to which it was entitled under the act of Congress by virtue of the findings of fact made by the Board.

Summary of Argument

A. In No. 158

State's basic contention rejected by the court below is that where the Board has made the requisite findings under the statute entitling State to a certificate of public convenience and necessity, the court has the power and duty under Section 10(e) of the Administrative Procedure Act of 1946 to compel the Board to issue the certificate to State. The logical progression of the argument is as follows:

1. The Board found that transportation covered by the application filed by State was required by public convenience and necessity (R. 565 [892-6]; map No. 2, R. 676; R. 1-26).

2. The Board found State fit, willing and able to conduct the transportation in question (R. 612; R. 565 [901]).

3. Under the statute [Civil Aeronautics Act, § 401(d)]* the Board had no further discretion to exercise. That statute provides that where public convenience and necessity have been found and where the applicant has been found to be fit, willing and able, the Board "shall" issue

*App. A, pp. IIIII, *infra*.

the certificate (provided, as in this case, that the application covers the transportation for which public convenience and necessity has been found). The Board's only alternative in a case such as the present one, where the application is for both a permanent or temporary certificate, is under Section 401(d)(2) of the Civil Aeronautics Act under which the Board may issue a temporary certificate. One or the other the Board must do.

4. As the Board, by its own findings as to the public convenience and necessity of the transportation in question and State's fitness, willingness and ability, has exhausted all of the discretion which Congress has conferred upon it, there remains only the ministerial act of issuing either a permanent or temporary certificate. Such ministerial action must be compelled by the courts if application is made under Section 10(e) of the Administrative Procedure Act, for that act, in turn, not only empowers the court to act in this situation but states that the court "shall (A) compel agency action unlawfully withheld or unreasonably delayed" (60 Stat. 243; 5 U. S. C. § 1009[e]; App. A, p. X, *infra*).

The power thus specifically conferred upon the courts by an act of Congress is akin to the power which the courts have long exercised to compel, by mandamus or other peremptory order, ministerial action by an administrative agency which has made findings in favor of a petitioner but has refused to perform the ministerial action which Congress specified should follow as a consequence of the findings made.

The legislative history demonstrates that the power conferred by the Administrative Procedure Act encompasses the relief here requested.

State is entitled to the mandatory order even if it be assumed *arguendo* that the Civil Aeronautics Act permits the Board as between competing applicants all of whom have been found fit, willing and able, to choose the most able. The Board in that event has likewise made the choice in State's favor. The Board, *qua* State, has exercised its discretion by eliminating every other *applicant* for the local routes here sought (R. 565 [896-901]). The Board stated (R. 565 [901]):

> "The choice has thus narrowed down to State Airlines and Piedmont Aviation, and which of these two companies should be selected to conduct the proposed service presents a close and difficult question."

As the court below held that Piedmont was not an applicant within the statute, Piedmont is eliminated as a matter of law. Thus, again, upon the Board's own findings of fact, State is left as the only applicant fit, willing and able to perform the transportation for which public convenience and necessity was found. Under this theory also, therefore, State is entitled to an order under the Administrative Procedure Act compelling the Board to issue to it the certificate which has been unlawfully withheld.

Decisions such as *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, upon which the court below relied, are not in point for there the administrative agency had not made a finding that the applicant was fit, willing and able but had made the contrary finding. New findings of fact were required before the duty to issue a certificate arose. But if *Federal Comm'n* v. *Broadcasting Co.* is deemed to stand in the way of a mandatory order here compelling the Board to do its statutory duty, then, it is submitted that the subsequent enactment of the Administrative Procedure Act renders that decision inapplicable.

B. In Nos. 157 and 159

The Court of Appeals was correct in determining that the Board had no statutory authority for issuing the certificate of public convenience and necessity to Piedmont which had not applied for the transportation covered by the certification. The Board's orders issuing the certificate were subject to judicial review to assure application of the standards Congress had laid down for such action.

Congress, by subsection (d) of Section 401 of the Civil Aeronautics Act, limited the power of the Board to issue certificates to those authorizing "the whole or any part of the transportation covered by the application". As Piedmont had not applied for the transportation certificated, the Board's action in issuing the certificate was in direct violation of the statute.

The decision of the Court of Appeals on this score did no more than apply standards plainly laid down by Congress; these standards must govern even if the Board feels that it could function more efficiently in disregard of the Congressional limitation. In fact, however, the Board is not hampered by the limitation for Congress has conferred upon the Board ample power to carry out its duties in compliance with the legislative mandate.

If the Board were permitted, contrary to the Congressional mandate, to issue certificates for transportation not covered by the application, then the provisions for notice to other applicants, existing carriers, the Post Office Department and other interested persons would be completely meaningless, for no one would be advised of the scope of the issues presented by the application. The lack of any notice that Piedmont was a candidate for the route certificated to it, seriously prejudiced State in the present case and denied to State procedure required by law.

That the Board lacked authority to award the certificate to Piedmont is likewise established by the Board's own decisions under the Act uniformly rejecting applications which do not specifically cover substantially the routes found to be necessary; the Board has taken such action in spite of the annexation to applications of so-called "catch-all" clauses far more comprehensive in scope than the "modification" phrase in the Piedmont application upon which reliance is now placed to enlarge the latter's scope.

In any event, the Board's action was arbitrary and capricious and the Board's conclusions were unsupported by findings or any substantial evidence for Piedmont did not adduce any plan of operation to show that it was fit, willing and able to operate the trans-Appalachian—Ohio Valley routes certificated to it.

ARGUMENT

In No. 158

POINT I

THE BOARD, HAVING EXERCISED ALL OF THE DISCRETION ENTRUSTED TO IT BY CONGRESS, THERE REMAINED ONLY THE MINISTERIAL ACT OF ISSUING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO STATE; SUCH ACTION SHOULD HAVE BEEN COMPELLED BY THE COURT BELOW.

A. The Board has Exercised, in Favor of State, all of the Discretion Entrusted to it by Congress.

The Board's entire discretion relating to the issuance of new certificates for domestic air transportation is found in the

following two subdivisions of Section 401 of the Civil Aeronautics Act (52 Stat. 987, 49 U. S. C. § 481):

> "(d)(1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.
>
> "(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder."

This statutory language seems to express a plain and unambiguous intent on the part of Congress. It is the unequivocal duty of the Board to issue a certificate of public convenience and necessity if it makes the findings of fact stipulated by Congress. By these two subsections Congress required that the Board "shall" issue a permanent certificate unless it elects, under the permissive second subdivision, to issue a temporary certificate. One certificate or the other the Board is compelled to issue if it makes the appropriate findings.

The Board itself recognizes that Section 401(d) as a whole compels it to issue a certificate once appropriate findings of fact have been made. Thus, in Docket No. 1973, et al.,

Fairbanks-Nome Intermediate Points Case, decided March 31, 1949, the Board said (p. 2, mimeographed advance sheet):

> "Section 401(d) *directs* the Board to issue a certificate authorizing the whole or any part of the transportation covered by an application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of the Act, and the rules, regulations, and requirements of the Board thereunder, and that such transportation is required by the public convenience and necessity."

This administrative interpretation of Section 401(d) is likewise borne out by statements of the Board's Associate General Counsel, John H. Wanner,* in the course of a symposium conducted by New York University School of Law in connection with the Administrative Procedure Act. In a discussion relating to the difference between the discretionary power vested in the Board under Section 401(h) and the mandatory power conferred by Section 401(d), the following transpired [Federal Administrative Procedure Act and the Administrative Agencies —With Notes and Institute Proceedings (N. Y. Univ. School of Law Institute-Proceedings, Vol. VII) at p. 139]:

> "QUESTION: The general parts of the judicial review section seem to contemplate review in many instances of failure of an agency to act, the term 'agency action' being defined, apparently, to include inaction as well as action. You take this particular function under 401(h) out of that by stressing the discretionary power of the Board, is that right?
>
> "MR. WANNER: That is right, *as distinguished from the provisions under Section 401(d) which require that the Board issue original certificates if the Board finds the statutory standards have been met.*"

*Mr. Wanner has been associated with the Board for over ten years.

Section 401(d) therefore directs the Board to issue the certificates if three conditions have been met: (1) the transportation to be authorized must be the whole or any part of the transportation covered by the application; (2) the Board finds the applicant to be "fit, willing, and able"; and (3) the Board finds the transportation to be required by public convenience and necessity.

There is no dispute in the present case that the applications filed by State cover the transportation authorized (R. 19-26, see also R. 1-18). It is only necessary to glance at the map which is a part of the opinion below (R. 676) to see that the transportation authorized parallels almost in every detail routes applied for by State (App. B, p. XVII, *infra*). The divergencies are too minor to elicit comment.

As to the requirement that the applicant must have been found fit, willing and able, the Board itself has stated that it found State fit, willing and able. Thus, in its opinion on reargument, it said (R. 612):

> "State's ability to build up a qualified organization is not questioned. That it could do so was implicit in the finding that the carrier was fit, willing, and able."

This statement merely recognized the tenor of the Board's original decision, for the entire disposition of the case (R. 565 [901-2]) was based upon the premise that State was fit, willing and able; otherwise, State's application would have been summarily rejected and the Board would not have stated that the choice between State and Piedmont "presents a close and difficult question" (R. 565 [901]).

This conclusion is fortified by the Board's other findings to the effect that State had been operating a charter service since 1941; that, through its President, it had undertaken ex-

tensive research into the problems and requirements of the territory and into the details of feeder operations adapted to the territory; that State had shown an adequate financing program; and that State had shown an energetic interest in the conduct of the operations (R. 565 [901]). Other findings of fact relating to State's detailed plan of operation, the use of approved and tested multi-motored planes, cost estimates and details of its plan for financing (R. 565 [939]) all reinforce the Board's statement upon the reargument that it had found State "fit, willing, and able".

As to the third requirement, namely, the finding of public convenience and necessity for the transportation in question, the Board found (R. 565 [895]):

> "In view of the foregoing consideration, we find that the public convenience and necessity require establishment of a route as follows: Between the alternate terminal points Louisville and Cincinnati via the intermediate points Lexington, Ky., Bristol, Va., and beyond Bristol (a) via the intermediate points Asheville, Charlotte, Southern Pines-Pinehurst-Aberdeen, Fayetteville, and the terminal point Wilmington, N. C., and (b) beyond Bristol via the intermediate points Winston-Salem, Greensboro-High Point, Raleigh-Durham, Goldsboro, and the terminal point, New Bern, N. C."

A similar finding was made as to the Cincinnati to Norfolk route (R. 565 [896]) and the connecting route from Roanoke to Wilmington (*ibid.*).

These findings by the Board exhausted all of the discretion vested in the Board by Congress. There remained only the ministerial duty of issuing the certificate which, upon the basis of the findings made, Congress directed that the Board "shall issue".

The Board has suggested that if it finds two or more applicants all "fit, willing, and able", under the statute, to conduct transportation which has been found required by public convenience and necessity, that then it is entitled to choose the most fit, willing and able applicant to certify. There is nothing in the statute which supports this contention. If we assume, *arguendo*, that the statutory provision requiring the Board to issue a certificate may be construed as the Board contends, nevertheless, upon the present record it was still the ministerial duty of the Board to issue the certificate to State. The Board eliminated all other parties involved in the consolidated proceeding either on the ground that the trunk-line operators should not be certified to operate the local or feeder systems (R. 565 [872-8, 896]) or on the ground that the parties interested in local transportation had not applied for the transportation found necessary or had not met the requirements of the statute in other respects (R. 565 [898-901]). Having thus eliminated the other parties, the Board stated (R. 565 [901]):

> "The choice has thus narrowed down to State Airlines and Piedmont Aviation, and which of these two companies should be selected to conduct the proposed service presents a close and difficult question."

The consideration of Piedmont, not an applicant for the transportation in question, having been pursuant to an error of law, corrected by the decision below, the Board itself has found State to be the only fit, willing and able applicant for the service in question.

Thus, the Board's discretion had been completely exercised when the decision below was rendered no matter what construction of Section 401(d) is adopted. There remains for consideration only the question of whether the court below had the power to compel the Board to do the ministerial act

which Congress directed should be the consequence of the findings made by the Board.

B. The Court Below had Power to Compel the Board to Issue to State the Certificate of Public Convenience and Necessity to which It was Entitled under the Findings Made.

1. The language of the Administrative Procedure Act itself plainly confers power to grant the relief requested.

Under Section 10(e) of the Administrative Procedure Act of 1946,* the court below had not only the power but the duty to compel the Board to issue to State the certificate of public convenience and necessity to which it was entitled under the findings of fact made by the Board. While only the italicized portion of Section 10(e) is directly involved, the entire section is quoted in order to make the discussion of Congressional intent more intelligible:

> "(e) So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. *It shall* (A) *compel agency action unlawfully withheld or unreasonably delayed*; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to

*60 Stat. 243, 5 U. S. C. § 1009(e).

> the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

The language of this section seems ample to confer upon the court below the power to compel the Board to issue the certificate of public convenience and necessity which it has unlawfully withheld from State. Not only does the specific power to "compel agency action unlawfully withheld" seem to encompass the present case, but this clause, read in connection with the other powers, indicates the intent of Congress to empower a court to give mandatory relief. Thus, subdivision (B) confers upon the court the power to hold unlawful and set aside agency action, findings and conclusions under the circumstances there enumerated. The court below has held that its power terminated with holding unlawful and setting aside the order certificating Piedmont. Such determination treats subdivision (A) as mere surplusage. But Congress, in enacting subdivision (A) created a power and imposed upon the court a duty to compel affirmative action on the part of the agency from which an appeal had been taken. No more appropriate case for the application of this power can be found than here where the Board, *i.e.*, the agency, has made all findings of fact necessary to the issuance of a certificate to State but has unlawfully withheld the issuance of the certificate to which its findings entitled State.

2. The legislative history of the Act shows a Congressional intent to empower the courts to give the relief here sought.

If, however, the language of Section 10(e) of the Administrative Procedure Act is not deemed on its face plainly to

empower and indeed compel the court below to make the mandate sought by State, then resort must be had to the Congressional history of this law to ascertain the Congressional intent.*

This history** discloses three elements of significance in construing the section here involved:

(1) The Administrative Procedure Act was not a piece of hasty legislation but, on the contrary, was one of the most carefully drafted laws ever enacted.*** The language used was the result of many revisions made in the course of ten years study given to the matter by Congress (See III House Misc. Reports, 79th Cong., 2nd Sess., Rep. No. 1980). Therefore, when Congress required the courts to "compel agency action unlawfully withheld", it may be taken for granted that Congress meant to confer upon the courts the power inherent in the language used.

(2) The enactment of the Administrative Procedure Act stemmed from a dissatisfaction with the unlimited and arbitrary power (often exempt from court review) exercised by administrative agencies (See III House Misc. Reports, 79th Cong., 2nd Sess., Rep. No. 1980, pp. 7-16, and statements by the author of this report, Mr. Walter, Cong. Rcd., Vol. 92, Part 5, pp. 5647-8; see also statements by Judge Summers,

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*The propriety of resort to the Congressional history seems well established. *United States* v. *Mine Workers*, 330 U. S. 258; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476; *United States* v. *Dickerson*, 310 U. S. 554; Powell, *Construction of Written Instruments*, 14 Ind. L. J. 309, 348.

**See the Committee Report (III House Misc. Reports, 79th Cong., 2nd Sess., Rep. No. 1980) and the debates (Cong. Rcd., Vol. 92, Part 2, pp. 2148-2167 and Part 5, pp. 5645-5668).

***See Senator McCarran's statement (Cong. Rcd., Vol. 92, Part 2, pp. 2148-2158) and Mr. Sabbath's statement (Cong. Rcd., Vol. 92, Part 5, p. 5649).

Chairman of the House Judiciary Committee, generally in charge of this bill [*id.*, pp. 5662]). The Administrative Procedure Act was intended to be remedial; it was intended to forestall "abuses which inevitably follow unlimited power" and it implemented the Congressional intent that citizens should be protected against "assaults on their liberty, lives and property" by federal administrative agencies (Cong. Rcd., Vol. 92, Part 5, pp. 5648, 5662). A construction of the act favoring the citizen in his contest with an administrative agency would therefore seem indicated.

(3) It was intended by Congress to afford judicial review as an adequate and complete remedy for every legal wrong. This seems to be the keynote of every comment addressed to the judicial review sections of this act. Thus, the Committee Report emphasized that the 1946 act, differing from its predecessor, contained "comprehensive provisions for judicial review for the redress of any legal wrong"* (III House Misc. Reports, 79th Cong., 2nd Sess., Rep. No. 1980, p. 10). Upon the same subject the report, in summarizing the four principal divisions of the 1946 act, stated:

> "4. It sets forth a simplified statement of judicial review designed to afford *a remedy for every legal wrong* (sec. 10)." (*Id.* at p. 17.)

Dealing specifically with the judicial review section with which we are here concerned, the Committee Report stated (III House Misc. Reports, 79th Cong., 2nd Sess., Rep. No. 1980, p. 41):

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*Substantially the same words were used by Senator McCarran, who was in charge of the Senate Bill (Cong. Rcd., Vol. 92, Part 2, p. 2151).

> "This section *requires adequate, fair, effective, complete,* and just determination of the rights of any person in properly invoked proceedings."*

Statements made both in the House and Senate at the time when the Administrative Procedure Act was finally enacted reflect the same Congressional intent. Thus, Mr. Sabbath, on the floor of the House, when advocating the adoption of a resolution sponsored by his Committee which would permit prompt action on the Administrative Procedure Act, recited the statement in the Committee Report that the act "sets forth a simplified statement of a judicial review designed to afford a remedy for every legal wrong"** (Cong. Rcd., Vol. 92, Part 5, p. 5645).

Mr. Michener, speaking on behalf of the Sabbath resolution, stated the purpose of the Administrative Procedure Act, as follows (*id.*, p. 5646):

> "The only aim and purpose of this bill is to see that the rank and file of American people receive the justice which our system of jurisprudence attempts to guarantee to them."

The Sabbath resolution was adopted and the House, resolving itself into the Committee of the Whole House, pro-

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*Unless Section 10(e) empowers the court below to require the Board to certificate State, the relief accorded is not adequate and fair, it is not effective and it is not complete. A mere remand of this case to the Board may well make the reversal by the Court of Appeals a mere formality affording State no substantive relief.

**Senator McCarran used substantially the same language in the Senate (Cong. Rcd., Vol. 92, Part 2, p. 2151). He also said (*ibid.*):

> "I desire to emphasize the fifth type of provisions, namely, provisions for judicial review, because it is something in which the American public has been and is much concerned, harkening back, if we may, to the Constitution of the United States, which sets up the judicial branch of the Government for the redress of human wrongs and for the enforcement of human rights."

ceeded to a consideration of the Administrative Procedure Act. With respect to the section here involved, Congressman Walter, in charge of the bill, said, in so far as here material (*id.*, p. 5654):

> "Subsection (e) of section 10 requires courts to determine independently all relevant questions of law, including the interpretation of constitutional or statutory provisions and the determination of the meaning or applicability of any agency action. They must compel action unlawfully withheld or unreasonably delayed."*

The House fully understood that Section 10(e) was designed to expand judicial power. Thus, Mr. Gwynne (also a member of the sub-committee in charge of this bill), in specific answer to a question by Mr. Granger whether the purpose of the bill was not merely procedural and not intended to have a substantive effect upon administrative procedure, stated that that was not the case and explained, with respect to the judicial authority conferred by the bill (*id.*, p. 5656):

> "This bill does not give a court review in any case where review is now precluded by statute. It simply clarifies and *expands* in some particulars the authority of the court in reviewing cases in which court review is not precluded by law."

Senator McCarran's answer to a question put by Senator Austin throws considerable light upon the Congressional intent to vest in the courts, upon review, the power to grant affirmative

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*Senator McCarran said (Cong. Rcd., Vol. 92, Part 2, p. 2158):

> "Subsection (e) of section 10 concerns the scope of review. Under this subsection, reviewing courts are required to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of any agency action. Such courts are required to compel action shown to be unlawfully withheld or unreasonably delayed."

relief. The colloquy was as follows (Cong. Rcd., Vol. 92, Part 2, p. 2159):

> "Mr. AUSTIN. In the event that there is no statutory method now in effect for review of a decision of an agency, does the distinguished author of the bill contemplate that by the language he has chosen he has given the right to the injured party or the complaining party to a review by such extraordinary remedies as injunction, prohibition, quo warranto, and so forth?
>
> "MR. MCCARRAN. My answer is in the affirmative. That is true."

As the Act did not, when adopted by the Senate, and does not now specifically empower a court upon review to issue writs of injunction, prohibition and *quo warranto*, or to invoke other "extraordinary remedies," the right to this type of relief must be found in that part of the Administrative Procedure Act here relied upon, *i.e.*, in the provision that the court shall "compel agency action unlawfully withheld or unreasonably delayed". The narrowest meaning which can be accorded this language is that it requires the courts to compel the agency to act consistently with the findings made in favor of the complaining party. In the present case, this imposes upon the Court of Appeals the duty to compel the Board to issue a certificate of public convenience and necessity to State.

3. The authorities relating to mandamus show that the court below had power to grant the relief requested.

The construction of Section 10(e) of the Administrative Procedure Act here urged would not confer upon the courts any unusual or drastic powers. It has long been recognized that courts might compel administrative agencies to act upon the basis of findings of fact made in favor of the party seeking

court intervention. A recent example of this rule is found in *United States* v. *Hines*, 70 App. D. C. 36, 103 F. 2d 737, 745, in which the court held that mandamus would lie to compel the Administrator of Veterans' Affairs to reinstate an insurance policy with total disability provisions. The Administrator had exercised his discretion in favor of the veteran but had refused to reinstate the disability provisions because the veteran failed to meet the health requirements of a regulation adopted by the Administrator. The court held this regulation void. As in the present case only a mistake of law (corrected by the reviewing court) stood between the relator (veteran) and the desired administrative action. The court, speaking through Chief Justice Vinson (then a justice of the Court of Appeals), said (at p. 44):

> "Thus the Administrator, having fully exercised his discretion in this respect, and having found that the veteran met the standard required by law, there remains no further discretion to be exercised. There only remains a purely ministerial duty of the Administrator which may be compelled to be performed by mandamus."

This decision expresses the general rule long adhered to that a ministerial act can be compelled by the courts either where the statute entrusts no discretion to the administrative officer or agency or where the discretion, which is a condition precedent to the ministerial act, has been exercised. *United States* v. *Schurz*, 102 U. S. (12 Otto) 378; *Roberts, Treasurer* v. *United States*, 176 U. S. 221, 231; *Garfield* v. *Goldsby*, 211 U. S. 249; *Parish* v. *MacVeagh*, 214 U. S. 124; *Lane* v. *Hoglund*, 244 U. S. 174, 181; *Wilbur* v. *Krushnic*, 280 U. S. 306, 318-9; *Miguel* v. *McCarl*, 291 U. S. 442.

The Supreme Court of Indiana, in *Public Service Com.* v. *State, ex rel.*, 184 Ind. 273, 111 N. E. 10, applied the principle here invoked to a factual situation somewhat similar to the present one. In that case the Public Service Commission had, in the exercise of its discretion, found facts entitling the relator to a certificate authorizing the sale of bonds. The Commission had, however, withheld a certificate for a part of the issue on the erroneous legal theory that it was entitled so to do in order to avoid competitive duplication of facilities. This having been held to be an error of law, the court determined that mandamus was a proper remedy to compel the issuance of a certificate. The court said (p. 278):

> "If the facts thus found are such as to entitle the utility to a certificate of authority to issue and sell bonds in a given amount, it is the duty of the commission to issue such a certificate. Under such circumstances the act required is ministerial and not discretionary. *To hold that such act is discretionary would enable the commission, after the facts were determined to grant the certificate of authority or to withhold it at its will, or to grant such a certificate to one public utility and to withhold it from another under the same state of facts. Such is not the purpose of the statute. State, ex rel.* v. *Porter* (1893), 134 Ind. 63, 32 N. E. 1021, 33 N. E. 687. A duty is none the less ministerial because the person who is required to perform it may have to satisfy himself of the existence of a state of facts under which he is given his right or warrant to perform the required duty."

Under the foregoing decisions, it would appear that issuance of a certificate of public convenience and necessity, either permanent or temporary, to State might well have been compelled by mandamus in view of the findings which the Board

had already made. It follows *a fortiori* that under the remedial provisions of Section 10(e) of the Administrative Procedure Act the court below had the power to compel the Board to issue the certificate which it had unlawfully withheld from State.

The decision of this Court in *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, relied on by the court below to demonstrate its lack of power is not a precedent in the present situation. In that case the Broadcasting Company had applied for a license under the Communications Act of 1934, as amended (47 U. S. C. § 151, *et seq.*). The Federal Communications Commission had denied the application for license upon the grounds (1) that the Broadcasting Company was financially disqualified and (2) that it did not sufficiently represent local interest in the community which the proposed station was to serve. Upon appeal to the Court of Appeals, that tribunal held that the Commission's conclusion regarding the Broadcasting Company's lack of financial qualification was based on an erroneous understanding of Pennsylvania law. The court did not pass upon the second ground stated by the Commission for denying the application because it did not believe this ground to have been controlling. The cause was remanded by the Court of Appeals "for reconsideration in accordance with the views expressed" (309 U. S. p. 139). Following remand, the Commission, which had in the meantime held hearings on two subsequently filed applications for the same facilities covered by the Broadcasting Company's application, directed that the three applications be set down for argument together, to determine on a comparative basis, which in the judgment of the Commission would best serve the public interest. The Broadcasting Company thereupon obtained a writ of mandamus from the Court of Appeals compelling the Com-

mission "to hear and reconsider" the Broadcasting Company's application "on the basis of the record as originally made". On writ of *certiorari* to this Court, the determination of the Court of Appeals in the mandamus proceeding was reversed. It was the opinion of this Court that mandamus would not lie to compel the Commission to change its procedure so as to consider separately the Broadcasting Company's application, for the statute did not require the Commission to apply a principle of priority in disposing of applications and the Commission, accordingly, had authority, if it so desired, to disregard such a principle. This Court's decision was based upon the Congressional intent evidenced by the Communications Act (309 U. S. at pp. 137-8)* and upon the limited power of review which Congress had accorded to the court under that Act (*id.*, at pp. 144-5).

The problem presented in the present case, the facts presented in the present case and the legislation to be construed in the present case are entirely different from *Federal Comm'n* v. *Broadcasting Co.*, *supra*; the differences make that decision inapposite.

Here, the Board has made, in State's favor, all findings of fact necessary to entitle State to a certificate under the statute; in the *Broadcasting Co.* case, the administrative agency had made findings of fact to the effect that the applicant was not a fit party to hold a license under the Communications Act. Here, following reversal, only a ministerial act remains to be

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*This Court found that the purpose behind the Communications Act was strict regulation of the industry by the Commission; but the principal purpose of the Civil Aeronautics Act is the "encouragement and development of an air-transportation system" and "of civil aeronautics" and the "promotion of adequate * * * service"; regulation appears to be a secondary aim (Civil Aeronautics Act § 2; 52 Stat. 980; 49 U. S. C. § 402). A different attitude would seem to be indicated.

done; in the *Broadcasting Co.* case the administrative agency was required to make new findings of fact in the light of the law as construed by the court. To order the issuance of a certificate in the present case only compels the Board to do that which Congress required it to do upon making the findings which have already been made in State's favor; in the *Broadcasting Co.* case, mandamus would have compelled the Commission to adopt a procedure which Congress had not enjoined upon it.*

But if anything in *Federal Comm'n* v. *Broadcasting Co., supra,* should be deemed to militate against the order here requested, then the subsequent enactment of the Administrative Procedure Act would render such decision inapplicable. This is particularly true for this Court in the *Broadcasting Co.* case emphasized the limited power of review conferred upon the court by the Communications Act and concluded that the Court of Appeals in laying bare the error of law which had been committed by the agency and in compelling the agency to act in the light of the court's correction "exhausted the only power which Congress gave it" (309 U. S. 145). This power was limited to entering "a judgment affirming or reversing the decision of the Commission" (47 U. S. C. § 402).

It was such limited power of review which, Congressional history indicates, Congress desired to expand in enacting the Administrative Procedure Act. The power and duty conferred

*The distinctions between the present case and *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, are equally applicable to *Fly* v. *Heitmeyer*, 309 U. S. 146. There, upon the authority of the *Broadcasting Co.* case, a decision issuing writ of mandamus to the Federal Communications Commission was reversed where that Commission had decided against an applicant on the ground that the applicant was financially disqualified. Upon remand, new findings of fact were required as a condition precedent to the issuance of a certificate and the Commission was held entitled to follow its own procedure in connection with making such findings.

upon the court to "compel agency action unlawfully withheld" cannot be disregarded here.

C. Unless a Mandatory Order is Here Made, the Entire Judicial Review, Here Successfully Invoked, May Be a Meaningless Formality.

The history of State's application before the Board has been a peculiarly unhappy one. Disposition of State's application by the Board was delayed for almost six years*—although Congress enjoined the Board to "dispose of such application as speedily as possible" (Civil Aeronautics Act, § 401(c), 52 Stat. 987; 49 U. S. C. § 481(c)). As a consequence of this delay, State's conception of cross-mountain transportation to connect the southeast with the Ohio Valley-Great Lakes Basin became the basis of routes awarded to others (see footnote 2 p. 4, *supra*) —principally later applicants. Finally, Piedmont received the nucleus of State's proposed system. Without application, without planning for the service involved, without producing evidence as to public need or public expense of the service in question, Piedmont became the recipient of the Board's favor.

State's request for stay, pending court review, was denied by the Board.** Piedmont was thus certificated and made eligible for millions of dollars of mail pay subsidy*** while State was effectively foreclosed from realizing income in its

*From State's original application, in October, 1941 (Tr. 16740), to the Board's ultimate decision awarding to Piedmont the routes for which State had applied on April 4, 1947 (R. 565).

**The Court of Appeals likewise denied State's request for a stay although after State was successful in the Court of Appeals the court granted a stay to Piedmont and the Board pending review in this Court.

***The issuance of a certificate of public convenience and necessity authorizing applicant to carry mail entitles the applicant not only to mail pay but to sufficient mail pay to enable the applicant to carry on its business (Civil Aeronautics Act, § 401(m); § 406(a), (b). Appendix A, pp. V-VI, *infra*).

chosen field of endeavor. Without opportunity to amortize or reimburse itself in any way for the substantial expenditures in research and in preparing and presenting to the Board the evidence upon which the Board acted when it certificated Piedmont, State was further left with the doubtful privilege of expending more substantial sums in order to seek vindication in the courts.

In spite of its almost hopeless position, State sought such vindication and obtained a court decision in its favor. The question now is whether this decision is of substance or will be set at naught when the Board again is called upon to act.

By certifying Piedmont, denying a stay of its operation after State had filed the petition for judicial review (although the Board had taken six years to decide the case), and by granting Piedmont an immediate substantial amount of mail payment subsidies to operate the transportation certified, the Board created a *fait accompli* almost immune to court review. Prior to such certification, Piedmont, like State, was not a certificated airline and Piedmont had carried on only a small passenger transportation charter business (less than State's, *cf.* R. 137 and 289 and see R. 566 [45]). After certification Piedmont was permitted, at the Government's expense, through the collection of mail pay subsidy to create an extensive organization and actually operate the routes in dispute.

Piedmont takes the position that judicial review has been only an unnecessary intellectual exercise, for in motions* filed with the Board since the Court of Appeals' decision it has asked the Board to take "quick action" pending review here to issue Piedmont a new certificate assuring the continuation of Piedmont's operation, irrespective of court decision.

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*Documents filed by Piedmont with the Board on April 8, 1949, and July 11, 1949.

certificate certain conditions with respect to the type of loads to be carried. Congress had authorized the Commission merely to grant the certificate if the applicant were found to have complied with the established standards. This Court sustained the action of the statutory court setting aside an order of the Commission. In so doing, this Court said (315 U. S. at pp. 488-9):

> "To appellee such matters involve life or death.* Empty or partially loaded trucks on return trips may well drive the enterprise to the wall.
>
> * * *
>
> "Congress has made a grant of rights to carriers such as appellee. Congress has prescribed statutory standards pursuant to which those rights are to be determined. *Neither the Court nor the Commission is warranted in departing from those standards because of any doubts which may exist as to the wisdom of following the course which Congress has chosen.*"

In *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, the Price Administrator complained that the Congressional exemption of public utilities from his jurisdiction, if applied as Congress intended it to be applied, to warehouses subject to local regulation, would frustrate him in the administration of the Emergency Price Control Act and place upon him wholly unwarranted burdens in determining where his power began and where it ended. This Court, in deciding against the Administrator's endeavor to extend his powers in keeping with his argument, said (pp. 154-5):

> "At least in the absence of a congressional mandate to that effect, we cannot adopt a rule of construction, otherwise unjustified, to relieve federal administrators

*Even more so than in the *Carolina Carriers* case is compliance by the Board with the Congressional mandate a matter of "life or death" for State.

The Board's past attitude and present almost partisan support of Piedmont indicate no desire to yield gracefully to the decision below.* That an administrative agency may upon remand nullify a court decision entirely is well indicated in *Securities Comm'n* v. *Chenery Corp.*, 332 U. S. 194.

If any future contest can be required by the Board between State and Piedmont for the right to the certificate here in question, the difficulty of State's position needs no elaboration. But for the original order of the Board erroneously placing Piedmont in the certificated carriers' business, State would welcome such a contest. Now, however, Piedmont, under its unlawful certificate, will have operated the transportation in question for some two or more years at the time of the ultimate remand of this case. Vast funds, including most substantial mail payment subsidies,** have been made available to Piedmont by reason of its certification. It has expended these funds in entrenching itself and strengthening its position as an airline operator. It has become an established licensee.

Technically accurate is the suggestion that the Board will act fairly and that action in disobedience to the court's opinion

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*Note, for example, in *Service to Newport News, Va. Case*, Docket No. 3238, et al., decided September 15, 1949 (mim. opinion), the Board, over State's objection, extended Piedmont's certificate in the face of the decision below holding the Piedmont certificate illegal. In so doing, the Board treated the decision below as completely nonexistent and assumed that Piedmont would continue its operations in spite of the court action. Thus, the Board said (mim. opinion, pp. 2-3):

> "Furthermore, the temporary certification of Piedmont to serve Newport News in this proceeding will enable us to observe the results of operations at that point over a period of approximately one year before our determination of the question whether Piedmont's certificate, which will expire in December 1950, shall be renewed."

**Public Records of the Board show that through August 31, 1949 Piedmont has received $1,720,536.55 of mail pay subsidy under the certificate which should never have been granted to it in the first place.

> of what we may well believe is a substantial burden but one implied by the terms of the legislation when viewed against the background of our form of government."

So, here, Congress did not see fit (even if it could have done so) to delegate to the Civil Aeronautics Board the broad power to certificate any person for any route system which the Board might feel required by public convenience and necessity, irrespective of the scope of the application filed by such person. If the Board, in establishing an adequate system of airlines, feels handicapped by the failure to have such power, it may not free itself of this handicap by a disregard of the law.

(a) The Civil Aeronautics Act, as construed by the court below, does not place the Board in a procedural straitjacket.

The fact, moreover, is that the frustration which the Board feels is largely imaginary.

If the Board decides that public convenience and necessity require routes for which there is no applicant "fit, willing, and able", the Board need only deny the applications before it. If the service is, in fact, necessary, there will be ample opportunity in a subsequent proceeding where applications have been filed covering the points in question to issue the required certificates. Indeed, that is the solution which the Board has adopted in other cases. See, for example, *Pennsylvania-Cent. Air., Youngstown-Erie-Buffalo Op.*, 1 C. A. A. 811, 818;*

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*Application to serve Youngstown denied because, while service needed, the applications did not cover the service found necessary (see comments on the *Pennsylvania Central Airline* case in 1d Air L. R. 405, 408). Subsequently, Pennsylvania Central Airlines, as well as United, filed applications for the east-west service to Youngstown found desirable by the Authority and certificates were issued (*United A. L., et al., Youngstown, Ohio, Operation*, 2 C. A. B. 543, 552-3).

will not be assumed. This Court has, however, in a similar situation, realized that weight must be given to practicalities rather than legal theory. Thus, in sustaining the complaining applicant in *Ashbacker Radio Co.* v. *F. C. C.*, 326 U. S. 327, 332, it was said:

> "Legal theory is one thing. But the practicalities are different. For we are told how difficult it is for a newcomer to make the comparative showing necessary to displace an established licensee.",

State does not, of course, concede that the Board is entitled to place it in the unfair position above outlined. As the Board blandly suggested in its application for stay in the court below, "Whatever erroneous determination the Board might make in favor of or adverse to that [State's] position is subject to correction by this court" (Application for Stay, dated May 2, 1949). That, however, affords little consolation to State which may reach a condition of exhaustion before it receives anything from its long struggle under an act enacted for "the encouragement and development of civil aeronautics".* The "adequate, fair, effective, complete, and just determination"** of State's rights requires a mandatory order compelling the Board to take the ministerial action to which its findings of fact, already made, plainly entitle State under the Civil Aeronautics Act. Any other decision renders meaningless in situations such as the present one the Congressional mandate to the courts that they shall "compel agency action unlawfully withheld".

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*Civil Aeronautics Act, § 2(a), (f), 52 Stat. 980, 49 U. S. C. § 402(a), (f).

**Congressional Record, p. 32, *supra*.

In Nos. 157 and 159

POINT II

THE COURT OF APPEALS WAS CORRECT IN DETERMINING THAT THE BOARD HAD NO STATUTORY AUTHORITY FOR ISSUING THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PIEDMONT WHICH HAD NOT APPLIED FOR THE TRANSPORTATION COVERED BY THE CERTIFICATION.

A. The Court Below Had the Power to Review the Board Orders.

The Court of Appeals was unquestionably authorized to interpret the Civil Aeronautics Act and determine whether the Board, in certifying Piedmont, had acted in compliance with the statutory requirements. Both the Civil Aeronautics Act (§ 1006, App. A, p. VI, *infra*) and the Administrative Procedure Act (§ 10(e), App. A, p. X, *infra*) so provide.

The latter specifically invests the reviewing court with the power and duty to "decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action". Power to "hold unlawful and set aside agency action, findings, and conclusions" is bestowed if the reviewing court finds, as did the court below, that the agency action is arbitrary and capricious, not in accordance with law, in excess of statutory authority or unsupported by substantial evidence.*

In *C. & S. Airlines v. Waterman Corp.*, 333 U. S. 103, this Court observed that orders of the Civil Aeronautics Board

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*Other grounds are also listed in the statute (App. A, p. X, *infra*) but the foregoing seem adequate to support the decision; athough we also show below (pp. 62-5, *infra*) that the certification of Piedmont was "without observance of procedure required by law".

relating to the issuance of certificates of public convenience and necessity "which do not require Presidential approval are subject to judicial review to assure application of the standards Congress has laid down" (p. 109).

The orders reviewed and reversed herein by the Court of Appeals were such orders and the court's decision was that Congressional standards had not been applied by the Board in certifying Piedmont. The Court of Appeals, *inter alia*, was of the opinion that "any award by the Board in such circumstances [*i.e.*, to one who was not an applicant for the transportation certificated] is one made without sanction of Congress and in excess of its delegated powers" (R. 683).

The only questions here presented, therefore, are whether the court below correctly construed the legislative mandate and correctly held that the Board, in certifying Piedmont, acted contrary to the standards established by Congress.

B. The Legislative Mandate Embodied in the Civil Aeronautics Act is Unambiguous and was Violated in Issuing the Certificate to Piedmont.

Section 401 of the Civil Aeronautics Act* contains the grant of power to the Board enabling it to certify new route applicants and also embodies the criteria which Congress established for the exercise of the Board's power.

This section, after prohibiting air transportation without a certificate, provides:

> First, applications for a certificate "shall be made in writing * * * and shall be so verified, shall be in such form and contain such information" as the Board shall, by regulation, require [Section 401(b)].

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*52 Stat. 987, 49 U. S. C. § 481, App. A, pp. II-V, *infra*.

Second, each application "shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require" and upon the filing of an application the Board shall give notice thereof "to the public * * * and to such other persons as the Board may by regulation determine" [Section 401(b), (c)].

Third, interested persons shall be entitled to file with the Board documents of opposition or support with respect to the application [Section 401(c)].

Fourth, the Board shall set the application for public hearing and "shall dispose of such application as speedily as possible" [Section 401(c)].

Fifth, the following standards shall be applied in disposing of the application [Section 401]:

> "(d)(1) The Board shall issue a certificate authorizing *the whole or any part of the transportation covered by the application*, if it finds that the applicant is fit, willing, and able to perform *such* transportation properly, and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder, and that *such* transportation is required by the public convenience and necessity; otherwise such application shall be denied.
>
> "(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing *the whole or any part thereof* for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform *such* transportation and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder."

Sixth, each certificate issued "shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered" [Section 401(f)].

To carry out the foregoing Congressional mandate and make the regulations contemplated thereby, the Board enacted Economic Regulations governing applications for certificates of public convenience and necessity.* These (1) provide for the execution of applications with due formality, including verification; (2) require the identification of each route for which a certificate is sought "specifying the type or types of service (mail, passengers, and property) to be rendered on each such route", and naming "every terminal and intermediate point to be included in the certificate for which application is made"; and (3) require the inclusion of a map "showing all terminal and intermediate points to be served, giving the approximate mileage between all adjacent points, and the principal over-all distances".

The statutory provision (Section 401) seems too plain to require much interpretation or construction. The only power conferred upon the Board is to authorize "the whole or any part of the transportation covered by the application". There is no other power.

The regulations of the Board requiring, in equally plain and unambiguous terms, made emphatic by repetition, that the applications must specify every terminal and intermediate point to be included in the certificate for which application is made, demonstrate the Board's own recognition that it may not issue a certificate except upon the basis of an explicit application for the transportation to be certified.

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*These regulations are reprinted at pp. XIII-XV of App. A, *infra*, and are found in Fed. Reg. Vol. 8, No. 177, at pp. 12257-8.

Indeed, any other construction of Section 401 would do violence to the entire statutory scheme. If certificates could be issued at large, irrespective of the routes covered by the application, the provisions for notice, service upon interested parties and the right to oppose would be wholly meaningless formalities, for no one could ever ascertain what issues were raised by any application filed.

Measuring the certification of Piedmont against the statutory standards can leave no doubt that the certification by the Board was in utter disregard thereof.

Pursuant to the statute, and the regulations of the Board above referred to, Piedmont, on March 8, 1945, filed its amended application specifying the precise terminal and intermediate points with respect to which it sought a certificate for passenger, mail and property transportation (R. 69-70). This application specified only the points ascribed to Piedmont in Map No. 1, incorporated in the opinion of the court below (R. 676; App. B, p. XVI, *infra*).

Aside from some local service principally in North and South Carolina, Piedmont designated in its application points lying on a roughly northerly and southerly axis from Columbia, S. C., through Charlotte, N. C., Winston-Salem, N. C., and Roanoke, Va., to Hagerstown, Md., and Washington, D. C., with a branch in a northeasterly direction to Norfolk, Va. (R. 69-70, 676). Piedmont specifically intended the principal axis of its route to run from southern points in a northeasterly direction toward the large industrial centers there found (R. 418). Not a single point specified in this mail and passenger application was west of the Appalachian Mountains (R. 69-70). The transportation was intended to be confined by those mountains to the area lying east thereof and follow existing surface transportation facilities (R. 416-7, 489).

The transportation covered by the certificate, on the other hand, ran predominantly in an easterly and westerly direction and was intended specifically to connect the Piedmont and Coastal regions east of the Appalachian Mountains with industrial centers in the Ohio Valley region west thereof (R. 565 [892-6]; R. 626-7; see map, R. 676, and App. B, *infra*). Far from regarding the Appalachian Mountains a barrier, as Piedmont had by virtue of the nature of its application (R. 416-7; 552-3), the Board specifically intended to certificate transportation, following State's plan (R. 115, 120; R. 213-20, 234, 245; R. 676), across the Appalachian Mountains at their highest and widest point (R. 565 [867, 892-3]).

Piedmont's amended application failed, even in the most general terms, to apply for "the establishment of a route designating Louisville and Cincinnati as alternate terminals and extending into the Piedmont area" to "provide these Carolina cities with an outlet to Louisville and Cincinnati" (R. 565 [895]). But these are the very routes which the Board found were required by public convenience and necessity and embodied in the certificate issued to Piedmont (*ibid*; R. 626).

The fundamental difference between the transportation covered by Piedmont's application and that certificated is also apparent statistically for, of the thirty-nine points covered by Piedmont's application, only nine were covered by the certificate issued to it and, conversely, of the twenty-eight points covered by the transportation certificated only nine points were also included in Piedmont's application (R. 69-70; 626-7). Furthermore, a glance at the maps (R. 676) will indicate that the type of service contemplated by Piedmont, even to the nine common points, had in most instances no relation whatever to the type of service certificated. Thus, for example, Piedmont's application expressed only the intent to serve Winston-Salem

as a terminal on routes leading north to Washington, D. C., and south to Columbia, S. C. (R. 69-70), but the Board certificated Winston-Salem as a point on an east-west route leading from Louisville, Ky., and Cincinnati, Ohio to New Bern, N. C. (R. 626).

There can be no question that the transportation certificated to Piedmont bears not the slightest resemblance to the transportation covered by Piedmont's application. There is no question here of whether the Board, under the statute, may have power to certificate intermediate points along routes described in applications but not specifically named therein, nor is there any question here as to the Board's power to certificate closely adjacent points on routes specified. That the Board may have such power was indeed assumed by the court below (R. 681).

The certification here was in direct defiance of the limitation placed upon the Board's power by the Congressional mandate which limited the power to certify to the "whole or any part of the transportation covered by the application" (§ 401[d] Civil Aeronautics Act).

To avoid the inescapable conclusion reached by the court below that there was no legislative authority for issuing the certificate here issued to Piedmont; the Board and Piedmont have urged (1) that an introductory clause and a concluding clause in the Piedmont application permitted the Board to act without regard to the points specified in Piedmont's application; and (2) that a limitation of the Board's power, as Congress plainly limited it, to certifying transportation only if covered by an application should be disregarded for the limitation would place the Board in a "procedural straitjacket".

An examination of these contentions will show that they have no basis in fact or law.

1. The contention that the "modification" clause, or general prayer for relief, extended Piedmont's application to cover the transportation certificated is unsupportable.

The introductory paragraph of Piedmont's application, as amended, has been the Board's and Piedmont's principal reliance; in so far as here material, it reads (R. 63):

> "The Applicant * * * hereby applies for a * * * Certificate of Public Convenience and Necessity under Section 401 of the Civil Aeronautics Act * * * for the authorization to engage in scheduled air transportation * * * *on the routes detailed herein*, or such modification of *such routes* as the Board may find public convenience and necessity require."

This introduction is followed by the heading "AUTHORITY SOUGHT" (R. 64). Aside from the request, here immaterial, for authority to transport by the pick-up method* (R. 64-7), the application contains only a request for a certificate "authorizing the scheduled transportation by air of passengers, mail, express and property over each of the following routes" (R. 69). The routes then enumerated are solely the routes east of the Appalachian Mountains, above described.

The only other clause relied upon is a clause contained in the prayer for relief in the original application, though not in the amendment, which uses the stock language that applicant prays "for such other and further relief, general and specific, under Section 401 * * * as the Board may deem appropriate, and to which applicant may be entitled * * *" (R. 41).

If the general relief clause is deemed sufficient to transform an application for routes east of the mountains between Washington, Norfolk and Columbia, S. C., into an application of

*The proposed messenger service (R. 67-9) in connection with the pick-up service likewise is of no importance here.

east-west routes from Louisville and Cincinnati, across the mountains to Wilmington, New Bern and Norfolk, then the requirement that an application must specify all terminal and intermediate points to be served is completely meaningless and the Congressional limitation upon the Board's power must be entirely disregarded.

Such a construction has not been seriously urged.

Turning then to the "modification" clause upon which entire reliance was placed in the court below, it seems equally clear that the introductory language is insufficient to turn Piedmont's application into one covering the transportation actually certificated. All that this clause accomplishes is to request a "modification" of "such routes", *i.e.*, "the routes detailed herein" (R. 63). Without reliance upon any complicated definitions, common sense seems to indicate that such a clause is insufficient to imply a complete transformation of the application so as to bring within its scope transportation entirely different from that detailed in the application. It seems on its face insufficient to create equivalence between Piedmont's application for service in and from North and South Carolina to Washington and Norfolk and a certification designed to connect cities in Kentucky and Ohio with eastern cities across the mountains.

But if there is any question as to the meaning of the word "modification" in this connection, dictionary definitions demonstrate that it is not a catalyst capable of transforming the routes covered by Piedmont's application into those embodied in the certification. Webster defines "modification" as the "act of modifying, or state of being modified" and the verb "modify" in turn, in the only sense in which it could possibly be used here, is defined as follows:

"1. to limit; also to mitigate; assuage [obs.]

"2. to reduce in extent or degree; to moderate; qualify; lower; * * *

"4. to change somewhat the form or quality of; to alter somewhat; as to modify the terms of a contract" (Webster's New International Dictionary, Second Edition, 1943).

The Oxford English Dictionary (Ox. 1933) gives the following general definitions of "modification":

"1. The action of limiting, qualifying or 'toning down' (a statement, etc.); a limitation, restriction or qualification."

"3. The action in making changes in an object without altering its essential nature or character; the state of being thus changed; partial alteration."

Indeed, Piedmont itself, through the testimony of its President, Thomas H. Davis, ascribed to the "modification" clause as well as the general relief clause the very meaning for which we contend. When being cross-examined relative to the possibility of giving service to the Greensboro-High Point Airport, located adjacent to one of the routes applied for by Piedmont, in addition to giving service to the Winston-Salem Airport located some fifteen miles from the Greensboro Airport, Mr. Davis said (R. 470):

". . . I would like to have it understood here, now, that any point not included on our proposed routes *which are along our proposed routes*, and which *would not materially upset our plan of operation*, that the Civil Aeronautics Board saw fit for us to serve, we would be delighted to serve it."

That is the only direct statement in the entire record of Piedmont's construction of its own application and plainly shows that Piedmont never intended to have included within its application points and routes wholly at variance with the specific transportation applied for.

Any construction of the modification clause or the general relief clause, to permit the certification of transportation entirely different from that covered by the specific application, disregards the Board's own regulation* which requires an application under Section 401 of the Civil Aeronautics Act to identify each route "for which a certificate is desired", specifying the name of "every terminal and intermediate point to be included in the certificate for which application is made". Under that regulation an application merely stating that it is for any points which the Board may see fit to certify is obviously improper and inadequate. But such would be the Piedmont application if the modification clause is to be given the effect for which the Board and Piedmont argue.

With the exception of the present case, the Civil Aeronautics Board has consistently, in its opinions dealing with similar problems, taken the position that a certificate may not be issued unless the application specifies the transportation which the Board ultimately determines to be needed by the public. See *West Coast Case*, 6 C. A. B. 961, 997; *Colonial Air. et al., Atlantic Seaboard Op.*, 4 C. A. B. 552, 558-9; *New England Case*, 7 C. A. B. 27, 39;** *North Central Case*, 7

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*Board's Economic Regulations § 238.1, App. A, p. XV, *infra*.

**The applications of Norseman and Northern were summarily rejected because the applications covered routes principally in a north and south direction, whereas, the Board found that feeder lines in an easterly and westerly direction were primarily required. Both applications contained general relief clauses and the Norseman application contained a "catch-all" requesting such routes "in the New England area as the Board may deem to be in accord with the public interest * * *."

C. A. B. 639, 673-4; *Middle Atlantic Area Case*, 9 C. A. B. 131, 177;* see other cases cited pp. 65-6, *infra*.

In denying the application of Los Angeles Airways, the Board in the *West Coast Case*, 6 C. A. B. at p. 997, *supra*, announced the very principle for which we contend:

> "Although its application contained a clause to the effect that it would accept a certificate authorizing service which might be found by the Board to be required by the public convenience and necessity in the area of its routes or adjacent to its routes, we do not believe that it is sufficiently broad to justify the selection of this carrier to provide the service here found required."

In the *Panagra Terminal Investigation*, 4 C. A. B. 670, the Board decided that a statutory provision** empowering it to "alter", "amend" and "modify" an outstanding certificate of public convenience and necessity did not permit the Board to extend Panagra's route by mileage amounting to 14% of Panagra's then existing mileage (see pp. 673 and 678). The power to "alter", "amend" and "modify" was held by the Board not to confer authority to "include the addition of new service which would be so extensive as to amount to a new air transportation route, or of *such a kind as to substantially change the character of a carrier's system*" (*id.* at p. 673).*** This lan-

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*Atlantic Central's application was summarily rejected because it did not specifically cover the route pattern found necessary by the Board although that Company's amended application contained a "catch-all" clause stating that its application was not limited to specific routes but should be construed to apply to "any other route or routes * * * to conform to its [the Board's] judgment as to the requirements of the public convenience and necessity * * *."

**Section 401(h) Civil Aeronautics Act, App. A, p. V, *infra*.

***The reversal of this case in *W. R. Grace & Co.* v. *Civil Aeronautics Board*, 154 F. 2d 271, did not disturb this decision but merely instructed the Board to determine whether it did not in fact have an application before it filed by Panagra for the service in question so that the Board would not be limited to acting on its own initiative under Section 401(h).

guage is apposite here, where the Board, relying solely on the much weaker phrase "such modification of such routes" has granted a certificate changing not only substantially, but entirely and completely, the character of the system applied for by Piedmont.

The Board's decision here was contrary to the opinion of the Attorney General (39 Op. Atty. Gen. 442, 444), who held, basing his opinion on the requirement of a posted notice of the application, that the Civil Aeronautics Authority was without power under the Grandfather clause contained in the Civil Aeronautics Act, Section 401(e)*, to issue a certificate covering more routes than had been applied for by the original telegraphic application filed by the applicant.

Even if it be assumed, therefore, that the very limited clause in the Piedmont application is a "catch-all" clause,** the Board's decisions referred to above and in another subdivision (pp. 65-6, *infra*), indicate that the Board has never before utilized such a clause to change entirely the scope of applications.***

Indeed, the examiners in the present case, in defining the proper use which might be made of catch-all clauses, expressly

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*52 Stat. 987, 49 U. S. C. § 481(e), App. A, p. III, *infra*.

**Real catch-all clauses are much more all-embrasive and generally include language to the effect that applicant requests authority to serve any other points in the general area involved by the application (R. 665-70). Even such language, of course, would be of no assistance to Piedmont which did not include within the scope of its application most of the area covered by the transportation certificated.

***The chaos which would follow acceptance of the Board's present argument is illustrated in this very case in which there were 25 airline applicants. If each applicant had regarded each other applicant as a prospective contestant for routes sought, the hearing would undoubtedly still be in its early stages. But that is what the Board's decision here would seem to require, for most applications, in addition to specifying routes, contained a "catch-all" or general relief clause in most instances much broader in scope and purpose than that found in the Piedmont application (R. 665-70).

ruled that "no evidence will be received with respect to cities or routes which are not specifically set forth in the application" (R. 671). If the Board's present contentions as to the efficacy of the Piedmont "modification" clause are to be accepted, then it follows that the examiners were authorized to recommend and the Board authorized to certify routes with respect to which the examiners had specifically excluded all evidence. Such a result is preposterous. The obvious purpose of "catch-all" clauses is to permit the Board, as the examiners (R. 671) and the court below (R. 681) suggested, to deal with intermediate and closely adjacent points which are in fact covered by an application although, perhaps, not specifically named therein.

2. The Congressional standards must be applied, irrespective of the Board's contention that it desires a broader scope for its activities.

The Board's argument is that if its power to certify is limited, as the Act states on its face, to transportation "covered by the application" of any one applicant, then it may not be able to certify the type and pattern of route systems which it may find desirable in the public interest. The first answer to this argument is that Congress and not the Board establishes the standards which the Board must apply in issuing certificates. A mere feeling on the part of the Board that it would like broader powers and that the limitations imposed by Congress are onerous, is wholly insufficient to deprive the Congressional standards of finality.

The Interstate Commerce Commission made a very similar argument in *U. S. v. Carolina Carriers Corp.*, 315 U. S. 475. The Commission there believed that it was furthering the general objects of the Motor Carrier Act of 1935 (49 Stat. 543) by imposing upon an applicant for a "Grandfather clause"

Trans-Southern Air., et al., Amarillo-Oklahoma City Op., 2 C. A. B. 250, 268-9; *Delta Air, et al., Service to Atlanta and Birmingham*, 2 C. A. B. 447, 478; *Cincinnati-New York Additional Service*, 8 C. A. B. 603, 605; *Great Lakes Area Case*, 8 C. A. B. 360, 399.

Furthermore, Congress specifically vested in the Board, upon its own initiative "after notice and hearing", the power to "alter, amend, modify, or suspend any such [existing] certificate, in whole or in part", upon certain specified conditions.* Thus, the Board, with a minimum of effort, but after notice of its intent and hearing (both of which were entirely lacking here), may establish the type of airline pattern which it desires.**

It is particularly significant that the power given to the Board with respect to new applications does not include the right to alter, amend or modify the applications filed. The power to issue new route certificates is strictly limited to granting certificates with respect to the whole or any part of the transportation in fact applied for. In fairness to the applicants, those opposing the application, and the Government, itself, including the Post Office Department, which is required to foot the bill for certificated carriers, it is submitted that the Congressional limitation is eminently proper.

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*Civil Aeronautics Act of 1938, § 401(h), 52 Stat. 987, 49 U. S. C. § 481(h) (App. A, p. V, *infra*).

**The Board did exactly this in *Arizona-New Mexico Case*, 9 C. A. B. 85, 100, saying: "No application by that carrier is now before us in these proceedings and service by it is not presently at issue. However, we will enter an order instituting a proceeding, under section 401(h) of the Act to determine whether the public convenience and necessity require the amendment of Continental's certificate * * *." The Board took the same action in *Delta Air, et al., Service to Atlanta and Birmingham*, 2 C. A. B. 447, 478.

(b) The decisions relied upon by respondents do not support their position.

The decisions to which the Board and Piedmont have referred in an endeavor to sustain their interpretation of the law are entirely inapposite. Cases such as *Chicago, St. P., M. & O. Ry. Co.* v. *U. S.*, 322 U. S. 1; *Alton R. Co.* v. *United States*, 315 U. S. 15, and *McCracken* v. *United States*, D. C. Ore., 47 F. Supp. 444, relate to different statutes and different questions. With the exception of a part of the *Omaha Ry.* case, 322 U. S. 1, *supra*, they are concerned entirely with certificates of public convenience and necessity under the Grandfather clause of the amended Motor Carrier Act (49 U. S. C. § 306). Under that clause the Interstate Commerce Commission was required merely to resolve the question of whether the applicant "was in bona fide operation on June 1, 1935, over the route or routes or within the territory for which application is made". This language differs materially from the limitation imposed by the Act involved in the present controversy. In each of the cases, except one portion of the *Omaha Railway* case, the application filed under the Grandfather clause included the points covered by the certificate and the only question was whether the applicant was in fact serving, before June 1, 1935, the route or territory covered by his application.

That portion of the *Omaha Railway* case, 322 U. S. 1, which did not involve a Grandfather clause determination upheld the order of the Interstate Commerce Commission requiring applicant to serve certain *intermediate* points upon routes which had been specifically applied for but which points applicant, by amendments of its application, had indicated it did not wish to serve. Even if we assume, as did the court below (R. 681), that similar power can be ascribed to the Civil

Aeronautics Board,* such power has no relation whatever to the power which that Board sought to exercise in the present proceeding. It is one thing, particularly in the absence of competing applicants**, to authorize service to intermediate points on routes specifically covered by an application; it is another to certify entirely new routes not covered by the application at all.

C. The Error of the Board is Emphasized by the Provisions Requiring Notice to All Interested Parties and Proper Hearings as a Condition to Issuing Certificates; Failure to Notify State of Piedmont's Unexpressed Aspirations Deprived State of a Hearing in Keeping with Standards of Due Process of Law.

Section 401(b) and (c) of the Civil Aeronautics Act integrate with the requirement of the filing of an application the service thereof upon "interested persons" and the command that the Board "shall give due notice thereof to the public * * * and to such other persons as the Board may by regulation determine". (App. A, p. II, *infra*).

Section 5 of the Administrative Procedure Act (60 Stat. 239, 5 U. S. C. § 1004) provides that in every case where, after hearing, the administrative agency is required to determine a matter, there shall be notice of hearings and issues and

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*It should be noted that the statutory provision of the Motor Carrier Act, 1935 (49 U. S. C. § 308[a]), upon which the court relied in the *Omaha Railway* case (322 U. S. p. 4), included a phrase omitted from a somewhat similar provision in the Civil Aeronautics Act (§ 401[f]), *viz.*, the right to attach to a certificate terms "including terms, conditions, and limitations as to the *extension* of the route or routes of the carrier".

**The parties complaining about the decision in the *Omaha Railway* case, *supra*, were railroads which were themselves serving the points in question—they were simply endeavoring to suppress competition.

all persons entitled to such notice shall be advised of "the matters of fact and law asserted" (App. A, p. VIII, *infra*).*

The Board in its own regulations issued at the same time as the regulation requiring the filing of detailed applications specifying each point to be served provided that notice of applications should be given to the public and to "all of the existing air carriers and other applicants" (App. A, p. XI, *infra*).

If under the statute and the regulations the notice is to serve any purpose whatever, it must obviously be a notice referring to an application which, at least in substance, plainly specifies the nature of the routes for which application is made. The notice effected by Piedmont's amended application indicated to all interested parties, including Public Counsel and State, that Piedmont sought only certain limited passenger routes principally in a northerly and southerly direction in the Piedmont and Coastal Regions of Virginia and the Carolinas. Certainly, no notice was given to anyone that Piedmont sought the trans-Appalachian Ohio Valley routes in which State was interested.

State's perfunctory cross-examination of Piedmont, which made no effort to show any factors bearing upon Piedmont's inability to operate trans-Appalachian routes, State's failure to attack the competency of Piedmont's personnel for trans-Appalachian operations, State's failure to attack specifically the lack of any plan for the operation of trans-Appalachian routes, and State's failure to attack Piedmont's plans for day contact flight, are all matters which may be ascribed directly to the failure of the Piedmont application to indicate any interest in the trans-Appalachian routes sought by State.

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*While this Act became effective after the original hearings, it was the law before the Board took the action which was reversed by the Court of Appeals.

The type of evidence which State could have adduced is exemplified in the statement of Carl J. Brock (R. 629 [78-81]), which gives an indication of Piedmont's shortcomings in connection with any operation such as that proposed by State and certified by the Board.

The failure of Piedmont in its exceptions to the examiners' report to except to the award of the trans-Appalachian Ohio Valley routes to State, and the failure to except to the examiners' report insofar as it did not award such routes to Piedmont, constitute the final formal recognition by Piedmont that it was not the applicant for such routes (R. 533-4).

Nowhere in the entire record of hearings and arguments before the examiners or, indeed, the Board, prior to the original decision by the Board in this case, did Piedmont evince any interest whatever in the trans-Appalachian Ohio Valley routes awarded to it, although applied for only by State.

Under these circumstances, to deny a certificate to State which was found fit, willing and able to operate these routes and to issue the certificate to Piedmont was not only contrary to the statutory and regulatory requirements of notice but was directly at variance with the decision of this Court in *Morgan* v. *United States*, 304 U. S. 1. Much of the opinion is apposite. We quote briefly (pp. 18-9, 22):

> "The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.
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> * * *

> "For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

The Board itself has recognized that it should not act unless it has "given due and timely notice to the applicant that this matter was in issue and after hearing thereon" (*Florida Case*, 9 C. A. B. 444, 445; see also cases cited in next sub-point). But this principal was wholly disregarded in the certification of Piedmont.

D. The Civil Aeronautics Board has Repeatedly Construed the Civil Aeronautics Act to Forbid the Issuance of Certificates for Routes not Covered by Applications Filed.

The expressed and published opinions of the Board prior to the present case are wholly at variance with its position here. In a consistent line of decisions, the Board has always adhered to the obvious meaning of the statute, *viz.*, that certificates may not be issued to applicants who have not filed applications specifically covering substantially the routes found to be necessary. *Trans-Southern Air., et al., Amarillo-Oklahoma City Op.*, 2 C. A. B. 250, 268-9*; *Delta Air, et al., Service to Atlanta and Birmingham*, 2 C. A. B. 447, 478; *Colonial Air. et al., Atlantic Seaboard Op.*, 4 C. A. B. 552, 559; *Rocky Mountain*

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*The applications of Braniff and Trans-Southern were denied because they did not contain specific requests to serve Tulsa and Little Rock "and other air carriers did not have notice at the time of the hearing of the request to authorize service to" the points in question (2 C. A. B. at pp. 268-9). The Braniff application contained the broad "catch-all" clause requesting "such other and further authority as the circumstances may warrant".

States Air Service, 6 C. A. B. 695, 734;* *West Coast Case*, 6 C. A. B. 961, 997, *supra*; *New England Case*, 7 C. A. B. 27, 39, *supra*; *North Central Case*, 7 C. A. B. 639, 673-4; *Great Lakes Area Case*, 8 C. A. B. 360, 398, 399;** *Cincinnati-New York Additional Service*, 8 C. A. B. 603, 605; *Mississippi Valley Case*, 8 C. A. B. 726, 751, 763; *Arizona-New Mexico Case*, 9 C. A. B. 85, 94;*** *Middle Atlantic Area Case*, 9 C. A. B. 131, 177.

The Board's construction of the Civil Aeronautics Act prior to the present decision is exemplified in the *Colonial Air. et al., Atlantic Seaboard Op.* case, *supra*. There the Board refused to issue to Colonial a certificate for New York-Florida service where its application had covered service from New York to Charleston, S. C., and thence to Nassau. It will be noted that the divergence between the application and what was ultimately sought was much less than the tremendous divergence

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*Four of six applicants eliminated because they did not, in addition to certain long distance service, propose a local service which the Board found necessary. At least one of the rejected companies (Inland) had a "catch-all" clause requesting "such other and additional authority as may be deemed appropriate".

**The applications of Trans-Ohio and Michigan Central were rejected largely because neither application covered all of the routes found necessary in spite of the fact that the application of each contained a clause requesting such other and further relief as public convenience and necessity or the Board might require and the Trans-Ohio application specifically requested routes to "such other and additional cities and such other alternate route patterns in the region involved as the Board may deem proper".

***The application of Air Transit Company was denied because its application was limited to New Mexico, whereas service into Arizona was found necessary by the Board. But the Air Transit application contained the very language which the Board in the present case has found sufficient to support the issuance of a certificate covering routes entirely different from those applied for by Piedmont and into two states not even mentioned in its application, for Air Transit requested "such modification of such routes as the Board may find public convenience and necessity require".

between Piedmont's passenger application and the certificate issued, but the Board said (4 C. A. B. at p. 559):

> "We must interpret Colonial's application in the light of the requirement of 'fair hearing' required by the statute and the Constitution. There are before us applications contemplating the type of service between New York and Florida points which we have found required by the public convenience and necessity, which are supported by competent and substantial evidence in this record. To award a certificate to Colonial authorizing service between New York and Florida points on the basis of the record before us would constitute a denial of that due process which is contemplated by the provisions of the Civil Aeronautics Act to the other parties in the proceeding."*

The other decisions above cited demonstrate that the Board, until the present case, has consistently refused certification, as between competing applicants, to the applicant who had not applied for the routes found necessary.

A portion of this philosophy, here applicable, is well summed up by Professor John H. Frederick in his work "Commercial Air Transportation" (Revised Edition, 1946) at p. 293:

> "9. Where there are two or more carriers applying for the right to operate over a new route, and where there is a substantial portion of the route in question for which one carrier did not make application, the less comprehensive application has been dismissed by the Board in favor of the more comprehensive."

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*Colonial's application also contained a "catch-all" clause requesting that any certificate be issued to it "'subject to such modification as the public convenience and necessity may require and which the applicant requests or to which it may consent'" (4 C. A. B. at p. 558).

POINT III

IN ANY EVENT THE DECISION BELOW SHOULD BE AFFIRMED IN NOS. 157 AND 159, FOR THE BOARD IN DECIDING ON THE RECORD BEFORE IT THAT PIEDMONT WAS FIT, WILLING AND ABLE TO OPERATE THE TRANSPORTATION CERTIFIED, ACTED ARBITRARILY, CAPRICIOUSLY AND IN DISREGARD OF ITS OWN STANDARDS.

The statute provides that an application "shall be denied" if the Board has not found, among other things, "that the applicant is fit, willing, and able to perform such transportation properly" [Civil Aeronautics Act § 401(d)]. It will be noted that the finding of fitness, willingness and ability is not to be made abstractly but is a finding with respect to "such transportation", that is, the transportation to be certificated.

While the statute does not enumerate the standards which the Board is to apply in determining fitness, willingness and ability, the second section of the act* does emphasize certain factors which the Board is instructed to consider in the performance of its duties and, particularly, in making the finding of public convenience and necessity required as a condition precedent to issuing the certificate here involved. Among the factors to be considered is the regulation of air transportation so as to "assure the highest degree of safety" and, again, so as to "best promote its development and safety". Other factors relate to the efficiency of service, the reasonableness of charges, competition, needs of the postal service, etc.

As in the case of similar legislation, the power conferred by Congress upon the Board with reference to finding an applicant fit, willing and able, will not be held so indefinite "as

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*52 Stat. 980, 49 U. S. C. § 402; App. A, p. 1, *infra*.

to confer an unlimited power"; on the contrary, the requirement "is to be interpreted by its context", by the nature of the air carrier business and "by the scope, character and quality of services"*.

The Board has itself established the following tests entirely consistent with the legislation and the obvious Congressional intent. An applicant, in order to be found fit, willing and able must show (1) "a proper organizational basis for the conduct of air transportation", (2) "a plan for the conduct of *the* service made by personnel shown to be competent in such matters", and (3) "the availability of adequate financial resources" (*Pacific Case*, 7 C. A. B. 209, 228). These tests have long been applied by the Board (*American Export Air. Temporary New York-Foynes Ser.*, 3 C. A. B. 294, 298; *North Central Case*, 7 C. A. B. 639, 663). Indeed, they have received judicial recognition (*Braniff Airways* v. *Civil Aeronautics Board*, 79 App. D. C. 341, 342, 147 F. 2d 152, 153).

In addition, applicants for local service such as involved in the present case have been made subject to the following requirement (*Local, Feeder, and Pick-up Air Service*, 6 C. A. B. 1, 4):

> "With respect to showing a justifiable expectation of success at a reasonable cost to the Government, it will be incumbent upon *each applicant to meet the test* of public convenience and necessity *by showing* a need for the service, the probable use that will be made of it, the effect on existing air services, and a cost to the Government in mail compensation bearing a reasonable relationship to these elements and to the character and quality of the service proposed."

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*Quotations from the opinion in *Federal Radio Comm'n* v. *Nelson Bros. Co.*, 289 U. S. 266, 285, quoted in *Nat. Broadcasting Co.* v. *U. S.*, 319 U. S. 190, 216.

In the present case, Piedmont did not offer one scintilla of evidence relating to the east-west transportation certified. It presented no plan whatever for the conduct of the service covered by the certification; it presented no evidence as to its competency to operate the route certified; it presented no schedules, no plans for the utilization of airports, no weather data, no time-saving data, no data as to traffic potentials, no revenue estimates, no cost estimates. There is, indeed, nothing in this record from which the Board could conclude, upon the basis of its own standards, that Piedmont was fit, willing and able to operate the certificated transportation.

Piedmont, as well as all other applicants and the Board itself, understood the type of evidence required to establish fitness, willingness and ability; Piedmont offered in evidence (for the routes for which it had applied, but not the routes for which it was certificated) proposed schedules and fares (R. 360-6), traffic estimates (R. 375), computation of passenger revenues (R. 401), estimates of costs and operating expenses (R. 384-98), computations of flight miles and hours (R. 399-400), and a profit and loss summary, including estimated mail pay to be received from the Government (R. 383).

Not only was this evidence directed exclusively at Piedmont's proposed system east of the Appalachian Mountains, without any reference whatever to the routes certificated by the Board, but this evidence was based specifically "on the performance of the Noorduyn Norseman V, having a passenger capacity of six and a crew of two" (R. 368). This small plane was chosen because "it will operate in and out of small fields safely" (R. 368) and because all proposed schedules were not only during daylight hours but were based upon the theory

of contact flight (R. 368, 442). The plane thus selected as the basis for the only plan for the operation of any service submitted by Piedmont was a plane which *concededly had never received an air-worthiness certificate for scheduled passenger operation** (R. 460).

The present argument that the Board in its specialized wisdom might overlook the absence of all relevant data and still find Piedmont fit, willing and able is contrary not only to the general rules laid down by the Board, as above indicated, but is contrary to specific decisions made by the Board under the very statutory provisions here involved.**

In *Middle Atlantic Area Case*, 9 C. A. B. 131, the Board found that public convenience and necessity required service, roughly, from Atlantic City, Baltimore and Washington, across the Appalachian Mountains to Pittsburgh (9 C. A. B. at pp. 176-7). Atlantic Central Airlines had applied for, had proposed a plan and had offered evidence for routes running north and south, east of the Appalachian Mountains, in New Jersey and Pennsylvania, between Philadelphia and Binghamton, and also between Allentown and New York (9 C. A. B. at p. 177). Thus, Atlantic Central was in substantially the same situation as Piedmont here. Public convenience and necessity for east-west routes having been found, it had submitted a plan pri-

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*Even if this single-engined plane had been approved for certificated transportation, the Board would never have permitted its use over the mountainous routes covered by the certificate issued to Piedmont. *Local, Feeder, and Pick-up Air Service*, 6 C. A. B. 1, f. n. 1 at p. 7. Of course Piedmont proposed the use of this plane only on the routes for which it had applied and these were over relatively level ground and specifically avoided the mountains (see R. 416-8; 553).

**These decisions, to be sure, are not binding as *stare decisis* but should be given weight as administrative constructions of the requirements of the Civil Aeronautics Act; these decisions are also of consequence in the determination that the Board's action here was capricious. See *Woko, Inc.* v. *Federal Communications Commission*, 80 App. D. C. 333, 153 F. 2d 623, 631.

marily for the operation of a north and south service. For that very reason, Atlantic Central's application was summarily rejected by the Board, in the following language (9 C. A. B. at p. 177):

> "Atlantic Central's application is concerned primarily with north-south New Jersey service with Pennsylvania service proposed between Philadelphia and Binghamton and between Allentown-Bethlehem and New York. *No operational plan was submitted for the service we have found to be required.*"

In *North Central Case*, 7 C. A. B. 639, 674, *supra*, Midwest Airlines was rejected among other reasons because "Its plan of operation and all estimates of revenues, expenses, and capital expenditures were based" on its proposed operation but not on the operation found necessary for the public convenience. And in *West Coast Case*, 6 C. A. B. 961, *supra*, the Board, in refusing to certificate Los Angeles Airways, which had submitted a plan of operation for transportation different from that found required, pointed out (p. 997):

> "No traffic evidence or cost data or other information bearing upon an operation similar to that herein involved were submitted by Los Angeles."

The Board, itself, thus has held that, in order to find an applicant fit, willing and able under the Civil Aeronautics Act, it must have before it a plan of operation by that applicant covering the system of transportation for which public convenience and necessity has been found. The submission of a plan covering other service is insufficient.

Following this principle, the Board in *Texas-Oklahoma Case*, 7 C. A. B. 481, 527, denied a certificate to Community Air Service because "its plans were predicated upon a different

type of operation" from that found necessary for the public convenience.

In the very case in which Piedmont received its certificate, the Board utilized this principle to dismiss from consideration parties who had applied for and submitted plans covering service different from that found required by public convenience and necessity. Prairie Airlines was rejected because (7 C. A. B. at pp. 896-7; R. 565):

> "The applicant has not presented any plans indicating that it would or could operate a system such as that found to be required in this proceeding. Accordingly, the application of Prairie will be denied."

Seaboard Air Transport Company was rejected for a similar reason (7 C. A. B. at p. 900; R. 565).

The Board has, indeed, gone even further and has rejected applicants who had submitted some plans relating to the transportation to be certified but had not submitted them with sufficient definiteness or detail. Thus, in *Trans-Southern Air., et al., Amarillo-Oklahoma City Op.*, 2 C. A. B. 250, 254, an application was denied because applicant's plans were vague and "so completely unsupported by evidence as to the cost of such service that we are unable to find applicant presently fit, willing, and able to render service * * *".*

It is impossible to reconcile the foregoing decisions with the issuance of a certificate to Piedmont in the present case. Piedmont submitted no plan at all for the operation of the

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*See also *North Central Case*, 7 C. A. B. 639, 663 (Bos application rejected because plans of operation furnished "were hazy and indefinite"); and *Delta Air. et al., Service to Atlanta and Birmingham*, 2 C. A. B. 447, 488 (rejecting Southern Airlines because of indefiniteness of plans and inability to determine therefrom type of equipment or number of planes required).

service found to be required. Piedmont did not submit any evidence as to the cost of such service or as to the mail pay subsidy which the Government would be expected to pay to Piedmont in the event of its certification.*

Furthermore, the certification of Piedmont, on the basis of a plan employing not only a single-engined plane but one having no certificate of air-worthiness, is contrary to the Board's rule in rejecting an applicant whose plans did not, on their face, comply with elementary safety requirements. In *All American Aviation, Pick-up, Delivery Service*, 2 C. A. B. 133, 152, the Board stated its rule as follows:

> "Although the actual checking and enforcement of safety standards in air transportation is a function distinct from that of issuance of certificates of convenience and necessity, the former being within the province of the Administrator of Civil Aeronautics, the fact that an application for a certificate of convenience and necessity relates to a type of operation not only untried but incompletely planned cannot be disregarded in considering the requirements of the public interest with respect to the disposition of the application."

Adhering to this principle, the Board, in *All American Aviation, Combination Service*, 8 C. A. B. 241, refused to amend the certificate of public convenience and necessity of All American Aviation, Inc. because it could not conclude "on the basis of the evidence now available to us concerning the safety of the proposed operation, which is still of an experimental nature, that the authorization sought by this applicant should be granted at the present time" (p. 242).

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*The mail pay subsidy follows as a matter of course upon the certification of a carrier to carry mail (Civil Aeronautics Act, §§ 401[m], 406, App. A, pp. V-VI, *infra*).

Without further multiplication of authorities, it is evident that the Board, with the exception of the certification of Piedmont, has consistently found unfit applicants who failed to submit adequate plans for the operation to be certificated. The Board has held that when Congress placed upon it the duty of determining whether applicant was "fit, willing, and able to perform such transportation" as a condition precedent to issuing a certificate, it required the Board to find, from substantial evidence, that applicant had submitted a plan of operation which (1) covered the system found to be required by public convenience and necessity; (2) was based upon a type of operation which could safely be carried on; and (3) included evidence as to the proposed cost of service from which the Board could conclude whether the mail pay requirements of the applicant would be consistent with the public interest.

The present record is devoid of any evidence with respect to Piedmont on any of these three fundamental points.

Not only is there a lack of any evidence to support the conclusion that Piedmont was fit, willing and able, but that conclusion is unsupported by necessary findings. The Board has made no finding that Piedmont submitted a plan to operate the transportation certified. It is not merely a question of unclear or incomplete findings, as in *U. S.* v. *Carolina Carriers Corp.*, 315 U. S. 475, 488-9, but there is an absolute lack of basic findings necessary to support the order (*Florida* v. *United States*, 282 U. S. 194, 215; *Colorado-Wyoming Co.* v. *Comm'n.*, 324 U. S. 626, 634; 2 vom Baur, *Federal Administrative Law*, §§ 564, 568).

The conclusion is inescapable that the Board acted arbitrarily and capriciously in issuing a certificate to Piedmont for routes with respect to which that applicant had failed to meet

the minimum and basic standards established by the Board itself for the certification of carriers.

Conclusion

In No. 158 the determination by the court below that it lacked power to make an order compelling the Board to issue a certificate of public convenience and necessity, either permanent or temporary, to State should be reversed with instructions to issue such order, in Nos. 157 and 159 the judgment below should be affirmed.

November 15, 1949.

Respectfully submitted,

FREDERICK W. P. LORENZEN,
Counsel for State Airlines, Inc.

PHILIP SCHLEIT,
Of Counsel.

APPENDIX A

EXTRACTS FROM CIVIL AERONAUTICS ACT OF 1938 AS AMENDED, 52 Stat. 977, 49 U. S. C. Section 401, *et seq.*

Civil Aeronautics Act, Section 2, 52 Stat. 980, 49 U. S. C. § 402:

"In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity—

"(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

"(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

"(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

"(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

"(e) The regulation of air commerce in such manner as to best promote its development and safety; and

"(f) The encouragement and development of civil aeronautics. June 23, 1938, c. 601, § 2, 52 Stat. 980; Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1235."

Appendix A

Civil Aeronautics Act

Civil Aeronautics Act, Section 401; 52 Stat. 987, 49 U. S. C. § 481:

"§ 481. Certificate of public convenience and necessity

"(a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation: *Provided,* That if an air carrier is engaged in such transportation on June 23, 1938, such air carrier may continue so to engage between the same terminal and intermediate points for one hundred and twenty days after said date, and thereafter until such time as the Board shall pass upon an application for a certificate for such transportation if within said one hundred and twenty days such air carrier files such application as provided herein.

"(b) Application for a certificate shall be made in writing to the Board and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

"(c) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for public hearing, and the Board shall dispose of such application as speedily as possible.

"(d) (1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able

to perform such transportation properly, and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

"(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder.

"(e) (1) If any applicant who makes application for a certificate within one hundred and twenty days after June 23, 1938, shall show that, from May 14, 1938, until the effective date of this section, it, or its predecessor in interest, was an air carrier, continuously operating as such (except as to interruptions of service over which the applicant or its predecessor in interest had no control), the Board, upon proof of such fact only, shall, unless the service rendered by such applicant for such period was inadequate and inefficient, issue a certificate or certificates, authorizing such applicant to engage in air transportation (A) with respect to all classes of traffic for which authorization is sought, except mail, between the terminal and intermediate points between which it, or its predecessor, so continuously operated between May 18, 1938, and the effective date of this section, and (B) with respect to mail and all other classes of traffic for which authorization is sought, between the terminal and intermediate points between which the applicant or its predecessor was authorized by the Postmaster General prior to the effective date of this section, to engage in the transportation of mail: *Provided*, That no applicant holding an air-

mail contract shall receive a certificate authorizing it to serve any point not named in such contract as awarded to it and not served by it prior to April 1, 1938, if any other air carrier competitively serving the same point under authority of a contract as awarded to such air carrier shall prove that it is adversely affected thereby, and if the Board shall also find that transportation by the applicant to and from such point is not required by the public convenience and necessity.

"(f) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States. No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require. No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

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Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board.

"(h) The Board, upon petition or complaint or upon its own initiative, after notice and hearing, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this subchapter, or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: *Provided*, That no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Board to have been violated. Any interested person may file with the Board a protest or memorandum in support or in opposition to the alteration, amendment, modification, suspension, or revocation of a certificate.

"(m) Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the transportation of mail, and shall transport mail whenever required by the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided."

Civil Aeronautics Act, § 406, 52 Stat. 998, 49 U. S. C. § 486:

"(a) The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, * * *

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"(b) In fixing and determining fair and reasonable rates of compensation under this section, the Board, considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Board shall take into consideration, among other factors, * * * and the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense."

Civil Aeronautics Act, Section 1006, 52 Stat. 1024, 49 U. S. C. § 646:

"(a) Any order, affirmative or negative, issued by the Board under this chapter, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 601 of this chapter, shall be subject to review by the circuit courts of appeals of the United States or the United States Court of Appeals for the District of Columbia, upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

"(b) A petition under this section shall be filed in the court for the circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia.

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"(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court; and the Board shall thereupon certify and file in the court a transcript of the record, if any, upon which the order complained of was entered.

"(d) Upon transmittal of the petition to the Board, the court shall have exclusive jurisdiction to affirm, modify, or set aside the order complained of, in whole or in part, and if need be, to order further proceedings by the Board. Upon good cause shown, interlocutory relief may be granted by stay of the order or by such mandatory or other relief as may be appropriate: *Provided*, That no interlocutory relief may be granted except upon at least five days' notice to the Board.

"(e) The findings of facts by the Board, if supported by substantial evidence, shall be conclusive. No objection to an order of the Board shall be considered by the court unless such objection shall have been urged before the Board or, if it was not so urged, unless there were reasonable grounds for failure to do so.

"(f) The judgment and decree of the court affirming, modifying, or setting aside any such order of the Board shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in sections 346 and 347 of Title 28. June 23, 1938, c. 601, § 1006, 52 Stat. 1024; Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1235."

EXTRACTS FROM ADMINISTRATIVE PROCEDURE ACT OF 1946, 60 Stat. 237, 5 U. S. C. Section 1001, *et seq.*

Administrative Procedure Act, Section 5, 60 Stat. 239, 5 U. S. C. § 1004:

"In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing,

except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 1010 of this title; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives.

NOTICE

"(a) Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

PROCEDURE

"(b) The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 1006 and 1007 of this title."

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Administrative Procedure Act, Section 10, 60 Stat. 243, 5 U. S. C. § 1009:

"Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

Rights of Review

"(a) Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

Form and Venue of Action

"(b) The form of proceedings for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

Reviewable Acts

"(c) Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the re-

view of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

SCOPE OF REVIEW

"(e) So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

Appendix A

REGULATIONS OF THE CIVIL AERONAUTICS BOARD

Serial Numbers 284 and 285

Served:

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

August 26, 1943.

NOTE

"The attached revisions of Sections 238.1 and 285.4 of the Economic Regulations were adopted by the Board without circulation to the industry, in view of special and emergency circumstances.

"The revision of Section 238.1 accomplishes the following changes:

"1. Service of notice by applicants for Certificates of Public Convenience and Necessity is no longer required. Notice to the public of the filing of an application will be given by the Board by posting notice of each application in the office of the Secretary and by making the information available to the Press. In addition, the Docket Section will distribute to a mailing list including all of the existing air carriers and other applicants, approximately once each week, a description of all applications filed since the date of the previous distribution.

"2. Applications for domestic routes are to be filed separately from applications for authority to engage in overseas or foreign air transportation. Although such applications may upon occasion be consolidated for hearing, the requirement of separate applications distinguishes between those applications which are and those which are not affected by Section 801 of the Act.

"3. Maps attached to applications no longer are required to include existing service by other air carriers to points involved in the application.

"The revision of Section 285.4 changes the time for accomplishing formal interventions. Hereafter intervening petitions may be filed at any time prior to the first prehearing conference, or, if there is none, not later than 10 days prior to the hearing. It is anticipated that this change will eliminate the necessity for a great many intervening petitions.

"In order that interested persons may be advised of the date for filing petitions of intervention, the Docket Section of the Board will include in its weekly releases, distributed to the mailing list, announcements concerning dates selected for prehearing conferences.

/s/ FRED A. TOOMBS,

Fred A. Toombs,

Secretary.

Attachments."

"Regulations

Serial Number 284

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

At a session of the Civil Aeronautics Board
held in its office in Washington, D. C.
on the 25th day of August, 1943

"The Civil Aeronautics Board, acting pursuant to the Civil Aeronautics Act of 1938, as amended, particularly Sections 205 (a) and 401 thereof, and deeming its action necessary

to carry out the provisions of said Act and to exercise its powers and perform its duties thereunder, hereby makes and promulgates the following regulation:

AMENDMENT NO. 3 OF SECTION 238.1 OF THE ECONOMIC REGULATIONS (Fed. Reg. Vol. 8, No. 177, pp. 12257-8)

APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

"Effective August 25, 1943, section 238.1 of the Economic Regulations is hereby amended in its entirety to read as follows:

SECTION 238.1 OF THE ECONOMIC REGULATIONS

APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

"(a) *Formal Requirements of Applications.* Applications for certificates of public convenience and necessity or amendments thereof, shall meet the requirements set forth in section 285.3 of the Economic Regulations as to (1) execution, number of copies and service; (2) verification; and (3) formal specifications of papers. All pages of an application shall be consecutively numbered and the application shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits shall be deemed to constitute a part of the application to which they are attached.

"(b) *Amendments to Application.* If, after receipt of any application, the Board shall request the applicant to supply it with additional information, such information shall be furnished in the form of an amendment to the original application. All amendments to applications shall be consecutively numbered and shall comply with the requirements of this Regulation as to form, number of copies, verification, and in all other essential respects.

"(c) *Incorporation by Reference.* In general it is desirable that incorporation by reference shall be avoided. However,

where two or more applications are filed by a single carrier, lengthy exhibits or other documents attached to one may be incorporated in the others by reference if that procedure will substantially reduce the cost to the applicant.

"(d) *General Provisions Concerning Contents.* The statements contained in an application shall be restricted to significant and relevant facts. They shall be free from argumentation or from expressions of opinion, except such as may be required by this Regulation.

"Requests for authority to engage in air transportation between points in the continental United States and requests for authority to engage in air transportation to or from any point outside the continental United States shall not be included in the same application.

"Each application shall give full and adequate information with respect to each of the items set forth in this paragraph. In addition, the application may contain such other information and data as the applicant shall deem necessary or appropriate in order to acquaint the Board fully with the particular circumstances of its case. Among other things, every such application shall contain the following information:

"(1) The full name and address of the applicant, the nature of its organization (individual, partnership, corporation, etc.) and the name of the State under the laws of which it is organized.

"(2) A statement that the applicant is a citizen of the United States, as defined by Section 1 (13) of the Act. It is not required that the application shall contain all the evidence which the applicant is prepared to present at the hearing or otherwise in support of such statement, but the application shall at least indicate the nature and result of its investigations in that matter and the character of the evidence it will be prepared to present in support of citizenship.

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"(3) An adequate identification of each route for which a certificate is desired, specifying the type or types of service (mail, passengers, and property) to be rendered on each such route, and whether or not such services are to be rendered in scheduled operations. The identification of each route shall name every terminal and intermediate point to be included in the certificate for which application is made.

"(4) A map (which may be attached as an exhibit) drawn approximately to scale showing all terminal and intermediate points to be served, giving the approximate mileages between all adjacent points, and the principal over-all distances.

"(5) A statement as to the type of aircraft applicant proposes to use in the new service and whether such aircraft is presently owned by the applicant.

"(6) If applicant does not hold a certificate of public convenience and necessity authorizing air transportation, the name and type of business of any affiliate, subsidiary, or principal stockholder of applicant engaged in any form of transportation as a common carrier or engaged in any phase of aeronautical activity.

"(e) *Applications for Operations Other than between Fixed Points.*

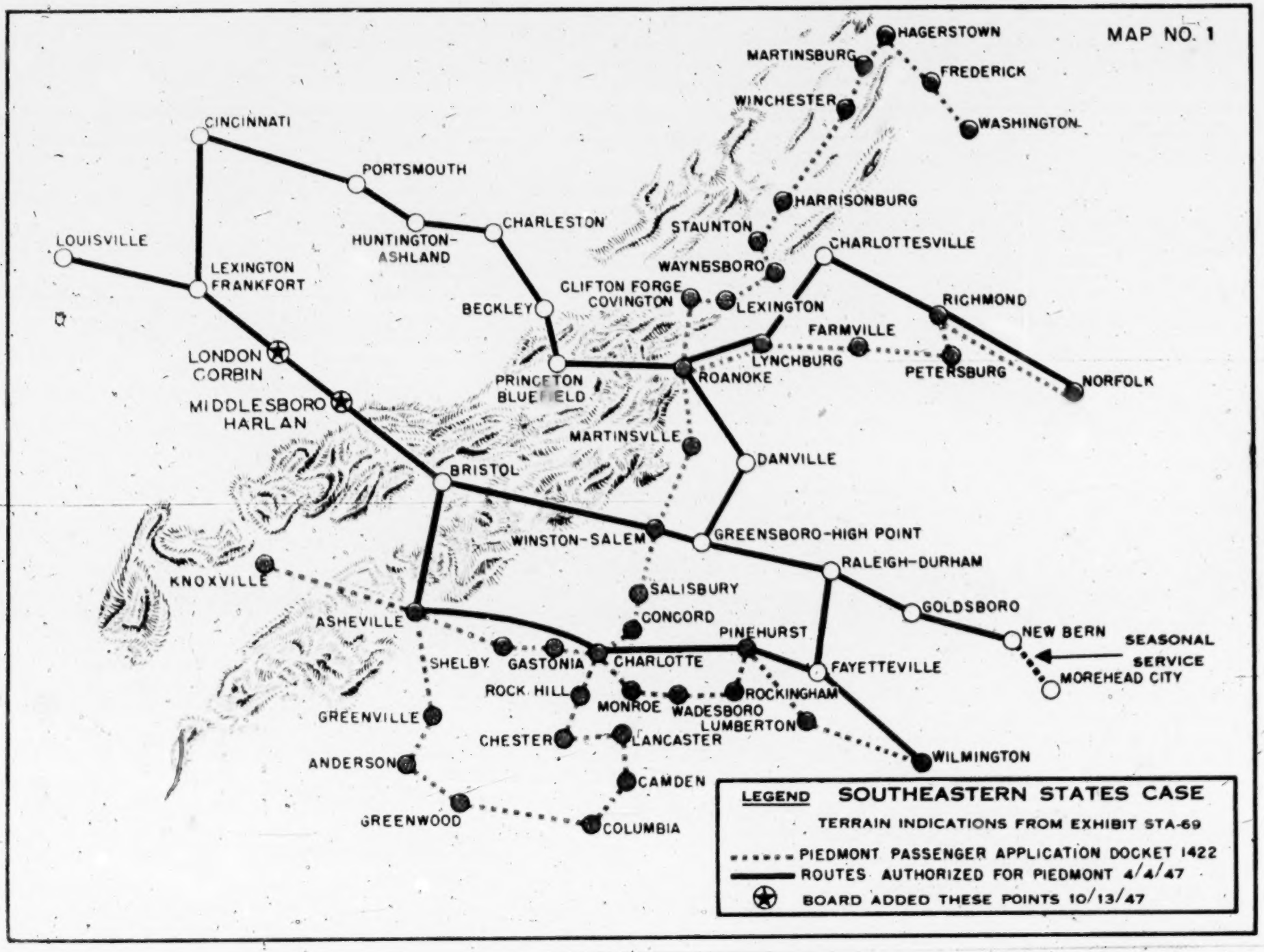
An application for a certificate authorizing operations other than between fixed points, or not having terminal or intermediate points capable of precise description, need comply with the provisions of clauses 3 and 4 of paragraph (d) of this Regulation only to the extent that it shall clearly describe the authorization sought by the applicant.

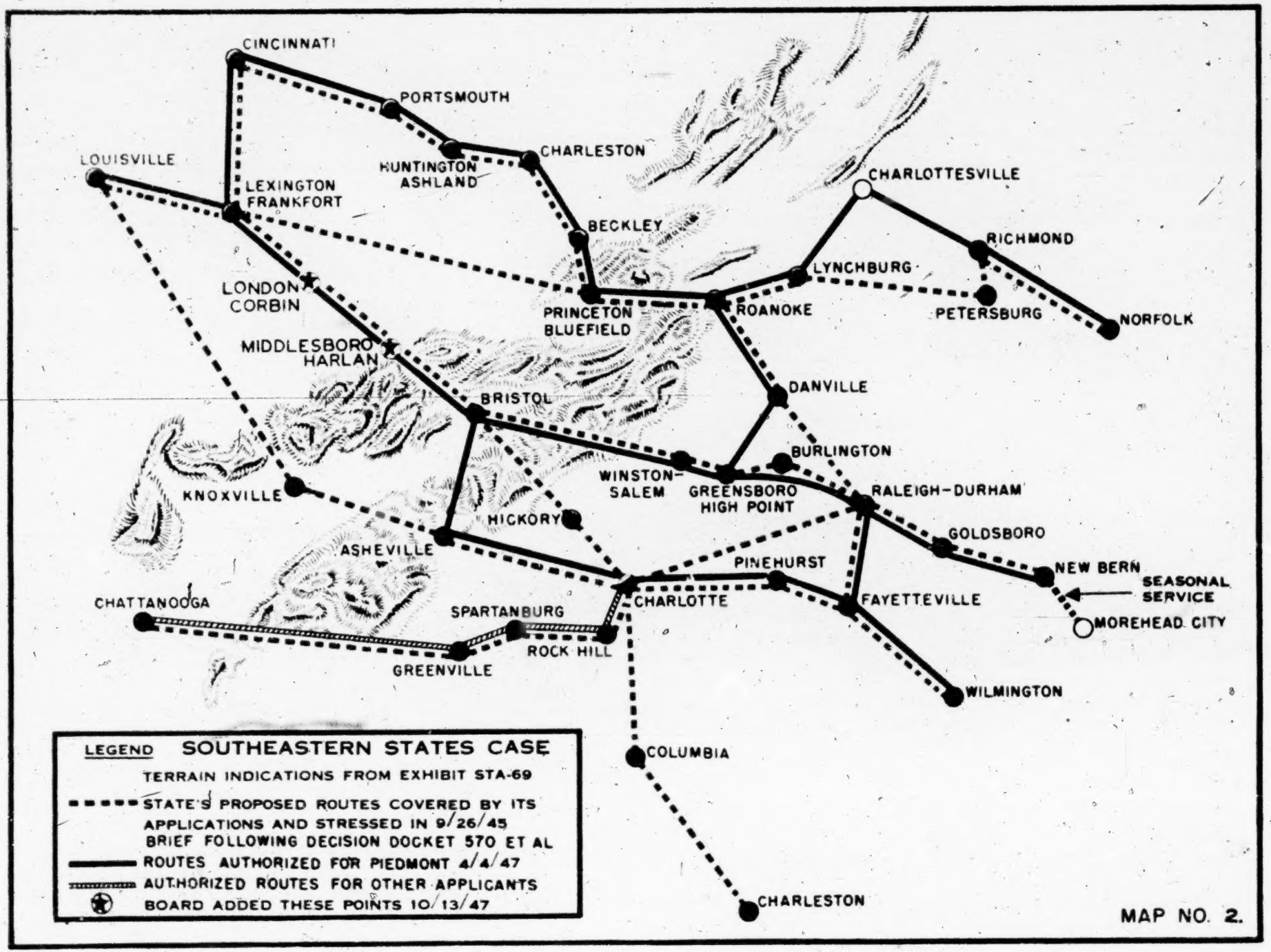
"By the Civil Aeronautics Board:

s/ FRED A. TOOMBS

Fred A. Toombs

[SEAL] *Secretary*"


MAP NO. 1
HAGERSTOWN
MARTINSBURG
FREDERICK
WINCHESTER
WASHINGTON
CINCINNATI
PORTSMOUTH
HARRISONBURG
CHARLESTON
STAUNTON
HUNTINGTON-
ASHLAND
LOUISVILLE
CHARLOTTESVILLE
LEXINGTON
FRANKFORT
WAYNESBORO
CLIFTON FORGE
COVINGTON
LEXINGTON
RICHMOND
BECKLEY
FARMVILLE
LONDON
CORBIN
LYNCHBURG
PETERSBURG
NORFOLK
PRINCETON
BLUEFIELD
ROANOKE
MIDDLESBORO
HARLAN
MARTINSVLLE
DANVILLE
BRISTOL
WINSTON-SALEM
GREENSBORO-HIGH POINT
RALEIGH-DURHAM
KNOXVILLE
SALISBURY
GOLDSBORO
CONCORD
ASHEVILLE
PINEHURST
NEW BERN
SEASONAL
SERVICE
SHELBY
GASTONIA
CHARLOTTE
FAYETTEVILLE
MOREHEAD CITY
ROCK HILL
ROCKINGHAM
MONROE
WADESBORO
LUMBERTON
GREENVILLE
CHESTER
LANCASTER
WILMINGTON
ANDERSON
CAMDEN
GREENWOOD
COLUMBIA
LEGEND
SOUTHEASTERN STATES CASE
TERRAIN INDICATIONS FROM EXHIBIT STA-69
PIEDMONT PASSENGER APPLICATION DOCKET 1422
ROUTES AUTHORIZED FOR PIEDMONT 4/4/47
BOARD ADDED THESE POINTS 10/13/47


CINCINNATI
PORTSMOUTH
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ASHLAND
LEXINGTON
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RICHMOND
LONDON
CORBIN
LYNCHBURG
PRINCETON
BLUEFIELD
ROANOKE
PETERSBURG
NORFOLK
MIDDLESBORO
HARLAN
DANVILLE
BRISTOL
BURLINGTON
WINSTON-
SALEM
GREENSBORO
HIGH POINT
RALEIGH-DURHAM
KNOXVILLE
HICKORY
GOLDSBORO
ASHEVILLE
PINEHURST
NEW BERN
SEASONAL
SERVICE
CHATTANOOGA
SPARTANBURG
CHARLOTTE
FAYETTEVILLE
MOREHEAD CITY
ROCK HILL
GREENVILLE
WILMINGTON
COLUMBIA
CHARLESTON
LEGEND
SOUTHEASTERN STATES CASE
TERRAIN INDICATIONS FROM EXHIBIT STA-69
STATE'S PROPOSED ROUTES COVERED BY ITS APPLICATIONS AND STRESSED IN 9/26/45 BRIEF FOLLOWING DECISION DOCKET 570 ET AL
ROUTES AUTHORIZED FOR PIEDMONT 4/4/47
AUTHORIZED ROUTES FOR OTHER APPLICANTS
BOARD ADDED THESE POINTS 10/13/47
MAP NO. 2.

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FILED
DEC 3 1949
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 157

CIVIL AERONAUTICS BOARD,

Petitioner,

v.

STATE AIRLINES, INC.,

Respondent.

No. 158

STATE AIRLINES, INC.,

Cross-Petitioner,

v.

CIVIL AERONAUTICS BOARD and
PIEDMONT AVIATION, INC.,

Cross-Respondents.

No. 159

PIEDMONT AVIATION, INC.,

Petitioner,

v.

STATE AIRLINES, INC.,

Respondent.

REPLY BRIEF OF STATE AIRLINES, INC.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

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REPLY BRIEF OF STATE AIRLINES, INC.

1. CONTRARY TO THE ARGUMENT OF THE BOARD AND PIEDMONT AND THE CHARTS SUPPLIED IN CONNECTION THEREWITH, THE RECORD DOES NOT SUPPORT THE CONTENTION THAT PIEDMONT'S APPLICATION WAS BROADER IN SCOPE THAN STATED BY THE COURT BELOW.

The only certificate of public convenience and necessity involved on this appeal is the one issued to Piedmont author

izing it "to engage in air transportation with respect to *persons*, property, and mail, as follows",* listing the routes connecting Louisville, Ky., and Cincinnati, Ohio, with Norfolk, Va., New Bern and Wilmington, N. C., and a connecting route from Wilmington to Roanoke (R. 626). Piedmont's application for pick-up service was specifically denied and Piedmont took no appeal from such denial (R. 565 [902]).

Nevertheless, in seeking to escape from the patent shortcomings of Piedmont's application to support the certification made, Piedmont openly and the Board more subtly** seek to enlarge the scope of Piedmont's passenger, mail and property application by adding thereto Piedmont's application for pick-up service (Pied. Br., pp. 4, 11-13) and Piedmont seeks to credit itself with points in an application (the one of May 29, 1944) which was expressly abandoned*** (Pied. Br., pp. 3, 11-12).

Piedmont calls attention to a map opposite page 3 of its brief designated as "Chart I" and bearing the legend "Specific Routes Proposed By Application dated May 29, 1944". This chart is then utilized in the text as the foundation for an argument "that Piedmont's original application specifically proposed service to all of the points included in the certificate" with the

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*Emphasis ours throughout unless otherwise indicated.

**The Board accomplishes this purpose by referring to both portions of Piedmont's application together to give the impression that the total mileage and points covered are material in determining whether Piedmont was an applicant for the transportation certificated (see Board Br., pp. 5, 28, 48).

***Nor is the Board entirely above reference to that abandoned application to support its argument (Board Br., p. 27) and the Board's explanation of the amendment, which completely superseded the original proposal of combined pick-up and passenger service, is neither clear nor complete (*id.*, pp. 27-8).

exception of those in Kentucky (Pied. Br., pp. 11-12). Piedmont nowhere advises the Court of the conceded fact that the proposals in this application were for the unsafe combined pick-up and passenger service and were entirely abandoned by amendment before any hearings were held by the Board (R. 31; 63-70).

With respect to Chart 2, opposite page 4 of Piedmont's brief, Piedmont neither on the face of the chart nor in the text advises this Court that the broken lines on the chart involve only an application for authority to transport "mail, express and property *using the pick-up method*" (R. 64). This method serves points without stops, picking up mail and other light weight property from ground installations by a device on the plane while in flight (*All American Aviation, Pick-up, Delivery Service*, 2 C. A. B. 133, 137, fn. 3). Such service needs no airports except the termini and is obviously unsuited for passengers and the conventional transportation of property certificated in the present case. Indeed, the Board has held that the combination of pick-up and passenger service is unsafe and will not be authorized (*All American Aviation, Combination Service*, 8 C. A. B. 241, 242).

Piedmont's italicized argument that its amended application contained a request to carry *"passengers"* over *"all the routes described in the application"* (Pied. Br., p. 12), is entirely unsupported by the record. Piedmont's citation to R. 41 refers to the general prayer for relief contained in its superseded application for combined pick-up and passenger service and the only other citation (R. 63) refers to the introductory paragraph of the amended application in which Piedmont seeks authority to operate both "scheduled airmail pick-up and local passenger air service * * * as follows * * *". What follows is a request

which distinctly separates the "AUTHORITY SOUGHT" into (1) that relating to pick-up service with respect to one series of points (R. 64) and (2) that relating to passenger and conventional property service with respect to different and much more limited routes (R. 69). The two types of service were separate and distinct. Indeed, it is fantastic to suggest that passengers were to be snatched from ground installations and hoisted into planes while dangling from the end of pick-up lines or were to be returned to the ground in a similar manner.

As only transportation of passengers and conventional transportation of property were certificated, it is obvious that an application for property pick-up service is of no avail under the statute limiting the Board's right to certify "the whole or any part of the *transportation* covered by the application" (Civil Aeronautics Act, § 401[d][1]). The broad word "transportation" used by Congress encompasses both the type of service to be rendered and the nature of the geographical routes to be covered.

Furthermore, even the pick-up service does not bear the slightest geographical resemblance to the routes certificated by the Board (cf. Map No. 1 [R. 676] and Chart 2, Pied. Br., p. 4).

This record shows that Piedmont's passenger application was limited, as we have heretofore pointed out and as the court below stated, to routes east of the Appalachian Mountains principally intended to connect points in the Carolinas with Washington, D. C., and Norfolk, Va. (R. 69-70). Therefore, contrary to the statement in Piedmont's brief (pp. 4, 12), Map No. 1 embodied in the opinion of the court below (R. 676) contains exactly and precisely the points covered by Piedmont's

passenger application.* The green lines on the court's Map No. 1 are identical with the solid red lines appearing on Piedmont's Chart 2.

The Board likewise has annexed as an appendix a chart containing the broken red lines covering Piedmont's proposed pick-up service and solid red lines indicating Piedmont's proposal with respect to the type of transportation covered by the certificate. Here, again, the broken red lines are immaterial for pick-up service was not certified and the solid red lines correspond exactly to the green lines appearing on the court's Map No. 1 (R. 676).**

With this exposition of the actual facts, most of the arguments advanced by the Board and Piedmont are dispelled. It is perfectly plain (1) that the Piedmont application did not cover the routes certificated, (2) that the Piedmont application did not cover substantially the routes certificated, and (3) that the question here is not whether the Board may certificate one or two or even several adjacent or intermediate points to an applicant who has substantially covered the transportation certificated but the question is whether the Board has power under the statute to issue a certificate covering transportation entirely different from that covered by the application. That is the question which the court below answered in the negative.

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*The court did not state, as Piedmont argues, that only a part of Piedmont's passenger routes were set forth in the map in question. In explaining the use of maps, the court below pointed out that Map No. 1 showed all the routes over which Piedmont sought authority to "carry passengers, mail, express, and property" pursuant to the only application upon which it went before the Board (R. 679, and fn. 5).

**The confusion engendered by other lines on the Board's map hardly leads to an understanding of the present issues. The "composite routes" are particularly unfair in that they leave the inference that there were applicants other than State for the certificated routes here involved. That is not the case. If the composite applications were broken down so that each application were shown separately, it would be apparent that only State applied for the route pattern and type of service which the Board found was required by public convenience and necessity.

2. THERE IS NO SUBSTANCE IN THE ARGUMENT THAT THE BOARD HAD POWER TO CERTIFICATE PIEDMONT ALTHOUGH ITS APPLICATION DID NOT COVER SUBSTANTIALLY THE TRANSPORTATION CERTIFICATED (Reply to Board Br., pp. 18-25; Pied. Br., pp. 24-9).

The Board's argument is confined to several appealing generalities without any regard to the issue here involved. The only question of statutory construction is whether, when Congress has limited the power of the Board to issue a certificate to one "authorizing the whole or any part of the transportation covered by the application", the Board may disregard that limitation and issue whatever certificate it may deem expedient according to its view of the public interest.

The Board contends that an administrative agency without regard to issues tendered "by the moving papers in the proceeding", "may in a proper case take such action as inquiry reveals to be required in the public interest" (Board Br., pp. 18-19). This proposition is stated more broadly than permitted by the authorities cited and has nothing to do with the present question. The cases hold only that an administrative agency, after adequate notice, may make a complete investigation under its regulatory powers and, on the basis of such investigation, take whatever action is *authorized by the statute* which such agency administers. With that principle we have no quarrel. The cases involved have nothing to do with power of an agency to issue a certificate of public convenience and necessity under express limitations imposed by Congress, but deal rather with an agency's general regulatory powers. The cases might have some relevancy had the present proceeding been one under Section 401 (h) of the Civil Aeronautics Act (State Br., App. A, p. v) where the Board "upon petition or complaint

or upon its own initiative, after notice and hearing, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require * * *". There, indeed, as the Board so eloquently argues, "the public interest is the touchstone for the exercise of agency authority" (Board Br., p. 20) and the Board, in such a proceeding, may take whatever action the statute authorizes upon any issues with respect to which it has given the applicants notice. That was the holding in this Court in *Labor Board* v. *Mackay Co.*, 304 U. S. 333, and *Cincinnati &c. Ry. Co.* v. *Inter. Com. Com'n.*, 206 U. S. 142 (Board Br., p. 19).

But this Court has never decided that an administrative agency, in order to give effect to its interpretation of the public interest, may disregard a specific Congressional limitation upon its powers such as that here limiting the power to certificate under Section 401(d) of the Act to "the whole or any part of the transportation covered by the application". On that point this Court's view seems authoritatively stated in *U. S.* v. *Carolina Carriers Corp.*, 315 U. S. 475, and *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144 (State Br., pp. 57-9).

The cases under the Motor Carrier Act such as *Chicago, St. P., M. & O. Ry. Co.* v. *U. S.*, 322 U. S. 1, and *Alton R. Co.* v. *United States*, 315 U. S. 15 (Board Br., p. 19), have already been fully disposed of (State Br., pp. 61-2).

None of the cases cited by the Board (pp. 19-20) stand for the proposition that the Federal Communications Commission has been permitted to grant radio licenses authorizing a signal of greater strength than that requested or the construction of a station differing from the one proposed by the applicant. On the contrary, those cases, while not in point here because they are apparently dealing with the question of proper notice not with that of power of the Federal Communications

Commission, fully support State's point of view. Thus, in *Woodmen of the World L. Ins. Soc.* v. *Federal C. Com'n*, App. D. C., 105 F. 2d 75, the court said (p. 77):

> "After the first hearing, the Commission granted a permit inconsistent with the application, so as to require towers almost twice as high as those considered in the expert testimony presented on the issue of interference at that time. *This should not have been done*, but that permit was subsequently revoked and a new hearing ordered at which WOW was given notice and opportunity to meet the issue arising from 257-foot towers required by the new engineering standards then in effect."*

The Board next contends that it has in its own prior decisions construed the Civil Aeronautics Act in such a way that the plain limitations imposed by Congress have been disregarded in "area proceedings" (Board Br., pp. 20-4).

An area proceeding is merely a proceeding in which the Board, for its own convenience, has consolidated for hearing several applications in a particular area (R. 27). In the present case, as the Board states, the area covered by the consolidated proceeding included the whole southeastern section of the country from points in Missouri, Indiana, Ohio, Kentucky and

*In *WREC* v. *Federal Radio Commission*, App. D. C. 67 F. 2d 578, the court likewise held that an order addressed to an issue not raised by the pleadings (that is the reduction of power for an intervening station), although the proper solution of the problem in the interest of the public, "cannot be entered by the commission in the present proceeding" (p. 579). The increase in wattage which was authorized had been applied for and the only question was whether the Board's order permitting increase in regular wattage was justified by an application for the increased wattage as "experimental power". Under the statute involved, the court was of the opinion that there was nothing wrong in this as the issue involved was the same and had apparently been fully litigated. This is especially true as all radio station licenses are temporary in any event (47 U. S. C. § 307 [d]).

the District of Columbia to Mississippi, Alabama, and Florida (Board Br., p. 4). It is the Board's contention that where such a consolidation has taken place the Board is entitled first to determine the public need for service in that area and then to select any party whose application has been consolidated in the proceeding to receive a certificate for transportation without regard to the scope of that person's application.

There is nothing in the Civil Aeronautics Act and the Board cites to nothing therein which increases the Board's power because it chooses to delay the consideration of applications until it has enough on hand to consolidate them into an "area" proceeding. As far as the statute is concerned, whether an application is considered alone, in company, in a consolidated proceeding, or otherwise, the ultimate power of the Board is limited to "authorizing the whole or any part of the transportation covered by the application". Even if the Board had in previous decisions taken a contrary view, such construction would have to be disregarded by the courts. As we have shown, however, the Board has consistently recognized the limitation upon its powers in a series of cases all of which were either designated as area proceedings or were such in fact because more than one application was being considered pursuant to an order of consolidation.*

The Board's principal reliance (except for its decision in the present case) is on the *New England Case*, 7 C. A. B. 27, 31 (Board Br., pp. 20-1). There could be little doubt as to the meaning of language quoted by the Board from this case had the Board continued its quotation to the end of the paragraph from which the language is taken. There the Board stated that as a result of its consideration of a "sound over-all air transportation pattern in the area involved" it "may depart

*See cases cited and discussed in State's brief, pp. 54-5, 65-7, 71-3.

somewhat from the arrangement of points in the applications" (7 C. A. B. 31). And that is all the Board seems to have done up to the time of the present case. As we have previously shown (State Br., p. 54, fn.) the Board in the *New England Case*, having found necessity for east-west routes, turned down the applications of Norseman and Northern in spite of the broad catch-all clauses because their applications covered "a series of routes which are predominantly in a north-south direction *through this area* and none of them correspond to those which we have found to be authorized" (7 C. A. B. at p. 39).

The other cases* cited by the Board in footnotes (Board Br., pp. 21, 23) are, with two exceptions, cited generally and we can find nothing in the cases to support the Board's argument that in area proceedings it has awarded routes differing in substance from those proposed by the successful applicants. The two cases cited specifically are stated to be authority for the holding (Board Br., p. 23, fn. 12) that in each a single point adjacent to the routes requested was added in the certification of a single applicant. *Mid-Cont. Air., Twin Cities-St. Louis Operation*, 2 C. A. B. 63; *National Air. et al., New Orleans-Fort Worth*, 4 C. A. B. 278. The same may be said of *Rocky Mountain States Air Service*, 6 C. A. B. 695, relied upon by Piedmont (Pied. Br., p. 20), where a single adjacent point was added in the certification. These dispositions are entirely consistent with the decision below (R. 681).

While Piedmont argues (Pied. Br., p. 20) that in *North Central Case*, 7 C. A. B. 639, Iowa Airplane Co. was certified

*It will be noted that most of the cases cited are the same as cases upon which we have placed reliance. In State's main brief, however, we have cited to the specific pages of those decisions which show that the Board, in area proceedings, has consistently followed the rule of rejecting the applicant whose application does not cover the routes found required by the public interest (State Br., pp. 54-5, 65-7, 71-3).

for routes far more extensive than its application, the Board certainly was not under the impression that such was the case (see 7 C. A. B. 678-9). Contrary to Piedmont's argument, the Board did not base its certification upon any catch-all clause and in making the certification it did not even refer to such a clause (*id.*, pp. 678-9). Indeed, the *North Central Case* is one of the principal cases in which the Board has recognized the limitation upon its power applied by the court below. In rejecting the application of Midwest the Board did so for the very reason that while Midwest was fit, willing and able to operate the route covered by its application, that application did not cover the route to be certificated (*id.*, p. 674).

Entirely different considerations govern certifications in foreign route cases which both Piedmont (Pied. Br., pp. 19-20) and the Board (Board Br., pp. 21, 23) emphasize. The statutory provision dealing with foreign route certifications states that a certificate for such transportation need designate terminal and intermediate points "only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed" (Civil Aeronautics Act, § 401 (f); State's Br., App. A, p. iv). This provision, entirely inapplicable to domestic route cases, the Board applied in *Northeast Air. et al., North Atlantic Routes,* 6 C. A. B. 319 (Pied. Br., p. 19; Board Br., p. 23). There the Board had issued a letter suggesting to each applicant the inclusion in its application of a proviso "that the applicant will serve any point within the general area covered by its application to which the Board finds service required by the public convenience and necessity" (6 C. A. B. at p. 346). This having been done, there should have been no question at all, in light of the special statutory provisions, as to the power of the Board to make the certifications which it did make. The Board, however, felt impelled to argue at length

that it could make the certifications in question although they differed very slightly from the applications actually filed (6 C. A. ~~B. at~~ pp. 345-50).

Piedmont's discussion (Pied. Br., pp. 19-20) of the *North Atlantic Route* case is at variance with the facts. Piedmont states that American Export Lines applied only for routes across Central Europe but was awarded routes across Northern Europe. The fact is, as the Board states (p. 345), that Export applied for European routes to Moscow and London, via Berlin, Warsaw and Scandinavia. Piedmont states that Pan American had applied only for a northern and southern route across Europe and was awarded a central route. But the Board, in describing the Pan American application, states (p. 348):

> "In Europe it [the transportation certified] falls between the specific points requested beyond London to Moscow and the specific points requested beyond London to Calcutta, and clearly lies within the 'general area' of Central Europe covered by the route pattern set up in the application."

As to TWA, Piedmont states that it had applied only for a central route across Europe and was awarded a southern route. The fact is, as the Board states (p. 349), that TWA had specifically applied for a route touching, among other Southern European points, Athens, Greece; Bari, Italy and Lyon, France (6 C. A. B. pp. 349-50).

If, as the Board suggests, its former decisions are to have controlling effect upon the question of construing the statutory limitation upon its power to issue certificates, it is submitted that the uniform trend of the Board's decisions is entirely in favor of the result reached by the court below.

The Board's final argument (Board Br., pp. 24-5) is that if notice is given (as the Board claims was here the case, although State denies this, see pp. 19-24, *infra*), then the Board may depart entirely from the statutory limitation and certify any applicant who happens to be before it for any route whatever. For the purpose of determining the limit of the Board's statutory power, however, notice makes no difference. If the Board had cried from the housetops that it intended to award to Piedmont a route not covered by Piedmont's application, that would not make the certificate here issued legal. The question is not of notice but of statutory power. Mere notice that an agency intends to exceed the limits of its power does not make such excess legal.

Piedmont's argument as to the Board's power is not joined in by the Board itself and has little merit. Its suggestion (Pied. Br., pp. 24-8) is that, in view of Section 401(f) of the Civil Aeronautics Act, the limitation upon the Board's power contained in Section 401(d) must be disregarded. Thus Piedmont contends that because the Board is authorized to attach " 'to the exercise of the privileges granted by the certificate * * * such reasonable terms, conditions, and limitations as the public interest may require' ", it may authorize transportation to points entirely different from those covered by the application. A mere statement of this proposition seems enough to expose it. By conferring upon the Board the power to add limitations, terms and conditions, Congress can certainly not be assured to have intended to legislate out of existence a limitation imposed upon the power to certificate in the preceding subsection of the Act.

Piedmont's reliance upon *Chicago, St. P., M. & O. Ry. Co. v. U. S.*, 322 U. S. 1 (Pied. Br., pp. 26-7), is misplaced. As we have shown, the only power there accorded to the Interstate

Commerce Commission was the power to include some intermediate points in the certification (State Br., pp. 61-2). Furthermore, the *Omaha Railway* case becomes entirely inapposite if heed be given to Piedmont's argument that the decision was based upon Section 208(a) of the Motor Carrier Act, which Piedmont claims is like Section 401(f) of the Civil Aeronautics Act (Pied. Br., p. 26). These two statutes appear alike in Piedmont's brief only because Piedmont terminates its quotation of Section 208(a) at the very point where it differs materially from Section 401(f). Following the portion of the section quoted by Piedmont, Congress particularly included the power on the part of the Interstate Commerce Commission to attach conditions "including terms, conditions, and limitations as to *the extension* of the route or routes of the carrier" (49 U. S. C. § 308). Congress, when it enacted Section 401(f) of the Civil Aeronautics Act in 1938, omitted the language which it had included in the Motor Carrier Act in 1935. The Civil Aeronautics Act confers no power to issue new certificates covering transportation other than that included within an application..

The Court below has construed the statutory provision in question as liberally as it can possibly be construed when it held (R. 681):

> "... we have not said, and we do not wish to be understood as ruling, that the Board may not take advantage of a 'catch-all clause' in an application by granting routes which represent slight deviations from those proposed."

The examples then listed, indicating the propriety of granting a certificate to cover intermediate and adjacent points not expressly covered by the application, extend the Congressional

grant of power in keeping with this Court's tenets of liberal and reasonable construction.

3. THERE IS NO BASIS IN THIS RECORD FOR A CONTENTION THAT PIEDMONT'S APPLICATION IN FACT COVERED THE ROUTES CERTIFICATED (Reply to Board Br., pp. 25-30; Pied. Br., pp. 11-22).

Piedmont and the Board contend that whether or not the Board complied with the statutory limitation contained in Section 401(d) of the Civil Aeronautics Act is a question of fact. Both then contend, in essence, that the Board, having found that Piedmont's application was sufficient under the statute, the court below had no authority to upset the finding.

The difficulty with these contentions is that neither the premise nor the conclusion is justified. There is no finding of fact in the record that Piedmont was an applicant for the transportation covered by the certification. Indeed, it is significant that while the Board, in discussing other applicants, called attention to routes requested, it refrained from doing so in the case of Piedmont (R. 565 [898-902]). The question of whether Piedmont was an applicant for the transportation certificated did not concern the Board at all when it made its original decision and neither Piedmont nor the Board now contend that any finding of fact covering the point at issue was made in the original decision.

The present contention (Board Br., pp. 25-6, 28-9; Pied. Br., p. 11) is that upon reargument the Board found as a fact that Piedmont was an applicant for the transportation certified. The record, however, shows that upon reargument the Board proposed to decide the question [1] re involved purely as a matter of law. The order permitting reargument limited it to two questions (R. 591):

> "(a) whether the public interest requires the selection of State or Piedmont, and (b) whether the Board *committed legal error by awarding the route to Piedmont;* * * *"

The Board's only decision as to the sufficiency of Piedmont's application to support the certification was in connection with resolving the second question—whether any legal error had been committed (R. 614-7).

Piedmont seeks to bolster its contention as to the binding nature of the Board's determination by the claim that the court below conceded the question here involved to be "a fundamental question of fact" (Pied. Br., p. 11). At the place cited by Piedmont, the court actually held (R. 681):

> "To be sure, the decision of what is or is not a modification of a given set of proposed routes is one which resolves itself in a fundamental question of fact and we recognize that it is not the function of this court to find fact or to substitute its judgment for that of the administrative tribunal on pure questions of fact concerning which opinions may reasonably differ. *However, that is not this situation.* We here rule, on the facts presented and uncontroverted, that no reasonable mind could conclude that the routes awarded in this case to Piedmont were merely a modification of the routes proposed by it. The implied finding by the Board that Piedmont was an applicant for the routes awarded lacks the support of any evidence, substantial or otherwise."

This appears to be a correct application of the law. Neither the Board nor Piedmont point to any facts supporting the argument that the court below in so holding "completely ignored the evidence of the record upon which the Board relied to support its finding" (Board Br., p. 26).

Piedmont's application was written as required by the Board rules (R. 63-70). Its application for authority to conduct transportation of passengers, mail and property lists unambiguously the routes sought (R. 69-70). There is no room for dispute. True, Piedmont's passenger application covered 1,400 miles and its pick-up service, which is here immaterial, covered 4,300 miles. But this mileage connected entirely different points and ran in entirely different directions from that certificated by the Board. Unless this Court is to accept the legal argument that an application anywhere within the area encompassed in an "area proceeding" is the equivalent of an application for the routes certificated, there is no evidence in this record to support a conclusion that Piedmont was an applicant for the transportation certificated to it.

Little need be added to State's previous discussion as to the meaning and significance of the "modification" clause appearing in Piedmont's application (see State Br., pp. 51-7). The grammatical contortion indulged in by Piedmont (Pied. Br., pp. 14-6) in an endeavor to persuade this Court that black can be said to mean white, defeats its own purpose. The more involved the argument, the less persuasive must be the result, for we are not dealing with any technical terminology but with words in their ordinary everyday connotation.

The Board's additional suggestion that Piedmont's application should be broadly construed because at hearing and argument Piedmont indicated its desire for such construction (Board Br., pp. 29-30) is supported by two record citations, both of which lead to precisely the contrary result.

The first citation (R. 470) refers to the testimony of Piedmont's President, in answer to a question of whether he would be willing to serve an intermediate point some fifteen miles from a point specifically designated in his application, and he an-

swered that he would be willing to do so and would like to have it understood "that any point not included on our proposed routes, *which are along our proposed routes, and which would not materially upset our plan of operation,* that the Civil Aeronautics Board saw fit for us to service, we would be delighted to serve it". That carefully-guarded answer limits the modification clause even more narrowly than our argument and certainly more narrowly than did the decision below which held it sufficient to encompass not only points "along our proposed routes" but adjacent points beyond the terminals (R. 681).

The other citation is to a statement by counsel, made more than a year after the hearings were closed, in which he suggested that Piedmont would be glad to add Charleston— one additional point—to the route but adhered to Piedmont's position that such addition "seems to be a little out of the sphere of the primary local interests of those cities", that is, the ones which Piedmont proposed to serve (R. 554).

Unless the Board is the sole judge of whether an application is sufficient under the statute to sustain the certification, there can be no doubt as to the correctness of the decision below that Piedmont was not an applicant for the routes certificated. But the propriety of judicial review on that issue is established by Section 10(e) of the Administrative Procedure Act (State Br., App. A, p. x), the recent decision of this Court in *C. & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103, 109 (State Br., pp. 44-5), as well as authorities such as *Roberts, Treasurer,* v. *United States,* 176 U. S. 221, 237, and *Wilbur* v. *Krushnic,* 280 U. S. 306, 318-9 (see Vom Bauer, *Federal Administrative Law* (1942), Vol. 1, pp. 437-8).

4. IF THE PIEDMONT APPLICATION SHOULD BE HELD ADEQUATE TO SUPPORT THE CERTIFICATION, THEN PROCEDURE REQUIRED BY LAW WAS NOT OBSERVED (Reply to Board Br., pp. 30-42; Pied. Br., pp. 23-4).

Near the conclusion of its argument, the Board states "Due process, however, deals with matters of substance, and its lack is not established by mere formal objections that have no substantial bearing on the rights of the parties" (Board Br., p. 41). With this we agree entirely. Acceptance of this proposition disposes of the minutiae to which the Board calls this Court's attention in an endeavor to show that State should have been aware of aspirations which Piedmont never expressed.

To look at matters of substance, the following was the situation when State went before the Board:

1. As to Piedmont, the statute limited the Board's power to issue a certificate to one "authorizing the whole or any part of the transportation covered by the application" of Piedmont (Civil Aeronautics Act, § 401[d]).

2. No decision by the Board intimated that this limitation could be disobeyed, and that routes entirely different from those applied for could be certificated (State Br., pp. 54-5, 65-7, 71-3; pp. 10-12, *supra*).

3. Piedmont's application for passenger, mail and property service was strictly limited to points east of the mountains, to routes running principally in a north and south direction and bore no resemblance whatever to the routes proposed by State (R. 69-70; State Br., pp. 4-6, 7-9). The modification clause in Piedmont's application both on its face and as a matter of construction by the Board itself in the cases previously decided

(State Br., pp. 54-5; see also pp. 65-7) did not operate to make Piedmont a candidate for routes entirely different from those specifically covered.*

4. Piedmont's only explanation in the record of its application limited it with respect to unnamed points to those "along our proposed routes, and which would not materially upset our plan of operation" (R. 470).

5. After the examiners' report had awarded to State a trans-Appalachian route and to Piedmont only a route east of the mountains predominantly in a northerly and southerly direction, Piedmont filed no exception (a) to the failure to award to Piedmont east-west routes to Ohio and Kentucky, or (b) to the award to State of the trans-Appalachian route (R. 533-4).

Those are the substantial and undisputed facts. They demonstrate that State was never advised and, in the nature of things, could not have been advised of any issue relating to Piedmont's aspirations to the routes applied for only by State. This deprived State of the right to be advised of "matters of fact and law" to be "asserted" in the administrative proceeding

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*In this connection note *W. R. Grace & Co.* v. *Civil Aeronautics Board*, 2 Cir., 154 F. 2d 271 (relied upon by Piedmont [Pied. Br., p. 22]), in which the court said (p. 280):

> "But the scope of this proceeding (No. 779) is to be measured, we think, by the directory part of the Board's order of September 10, 1942; not by its recitals, save as these may be necessary to throw light upon the rest; *nor by what the parties said in their arguments and briefs, or in the course of the hearings.* Of course, we do not mean that the order finally fixed the issues; but we think it did so *in the absence of some amendment plainly intended to change them.*"

Piedmont's reliance upon its quotation from this case (Pied. Br., p. 22) is misplaced for that language, as the quotation shows, dealt with Section 401(h) not with new certifications under Section 401(d).

(Administrative Procedure Act, § 5(a), (b) [State Br., App. A, p. viii]; *Morgan* v. *United States*, 304 U. S. 1; State Br., pp. 64-5).

But the Board contends, nevertheless, that State "should have known" of the action which the Board might take (Board Br., pp. 30-6).

Local, Feeder, and Pick-up Air Service, 6 C. A. B. 1, is cited for the proposition that in feeder cases the Board first determines the routes required in the public interest and thereafter selects the best qualified applicant for the certificate (Board Br., pp. 30-1). Nothing in this case so holds. As a result of complete consideration given to an area in a consolidated proceeding, the Board does not, as it now contends, select *one* applicant to render the service required but, on the contrary, the Board certifies *several* applicants in accordance with their applications to render the service found necessary. In every area proceeding case cited by either party herein, it will be found that this was the case. In the present proceeding many certificates of public convenience were issued to many applicants (R. 565 [914-25]; R. 626-7).

Nor does the existence of "catch-all"* clauses in applications indicate, as the Board now contends (Board Br., pp. 31-2), an understanding that the scope of applications will be disregarded. Such clauses enable the Board to shorten routes applied for, to rearrange points covered by the application and compel service to intermediate or adjacent points on routes specified (see cases cited State Br., pp. 54-5, 65-7). In spite of many very broad catch-all clauses in the present proceeding (R. 665-70) not a single one of the applicants (except Piedmont

*The "modification" clause in Piedmont's application does not even rise to the status of a catch-all clause (see real catch-all clauses [R. 665, 667-70]).

after the original decision had handed it a most unexpected windfall) took the position that it was entitled to routes or route patterns other than the ones specifically applied for.

While the examiners in their pre-hearing conference report did refer to the purpose of catch-all clauses, as the Board states (Board Br., p. 32), such report gave no intimation to anyone that a "catch-all" clause would permit certification of one who had not applied at all for the transportation in question. If that had been the purpose, there would be no need for filing amendments and yet the conference report pointed out that the examiners had required "all amendments to applications consolidated in this proceeding must be filed within ten days" (R. 671). Thereafter, referring "to the so-called catch all clause", the examiners stated (R. 671):

> "* * * while there is no objection to the use of this clause for the purpose of enabling the Board to grant a certificate to a point or points not specifically named in the application, the use of the catch all clause will be limited specifically to that purpose and *no evidence will be received with respect to cities or routes which are not specifically set forth in the application.*"

If the Board's contentions are accepted, the examiners were authorized to recommend and the Board to certify routes with respect to which the examiners had specifically excluded all evidence. More arbitrary or capricious conduct is hard to imagine. The examiners' statement apprised the applicants that the use of "catch-all" clauses would be limited to permit the Board to deal with intermediate and closely adjacent points which were in fact covered by an application although not, as the examiners stated, "specifically named" therein.

The references by the Board to testimony (Board Br., pp. 32-3) and statements of counsel (Board Br., pp. 34-5) to the

effect that other companies would be willing to serve points which the Board might designate in addition to those specifically mentioned, taken in their context indicate only a willingness to serve intermediate or adjacent points (see [R. 688-9] unprinted certified Transcript of Record to which reference is made in the printed record at places cited by the Board).

Such statements do not indicate in any way that State should have recognized Piedmont as a competitor for the trans-Appalachian routes covered only by State's application. This conclusion is perfectly clear from the Board's long quotation of a statement made by counsel representing State in the proceedings before the Board (Board Br., p. 35). Referring to a map which showed adjacent and intermediate points along State's proposed routes, Mr. Hill said that under State's catch-all clause it was willing to serve those points if the Board felt public interest required that service. There was no contention that State was entitled to roam all over the southeastern states area and accept a certificate for any route designated therein, irrespective of State's specific application.*

Equally misleading is the Board's contention that State in its brief before the examiners regarded every other applicant in the consolidated proceeding as a competitor for the routes involved (Board Br., p. 33). A consideration of this brief (R. 475-83) demonstrates that its assertion of a position "superior to that of any other new applicant seeking to serve this area" dealt only with the question of whether State had

*The same may be said of the phrase quoted by the Board (Board Br., p. 34) from the omnibus clause in State's exceptions to the examiners' report. Not only does this clause show on its face that it is related only to transportation forming a "logical part of the operating authority recommended * * * for State" (R. 529), but the phrase "not specifically sought by State" refers not to points not applied for but to points covered by State's application which, however, it had not sought in its brief before the examiners.

demonstrated sufficient fitness, willingness and ability to be awarded its routes. The comparison with other applicants was made not on the basis of competition for routes but solely for the purpose of showing State's fitness and ability by urging that its evidence on this subject was much superior to that of others. State did not consider the other applicants referred to as competitors for its routes across the mountains. Indeed, where others such as Commonwealth had applied for routes in part competitive with State, State's brief particularly dealt with that situation (Tr. 16206-7, referred to pursuant to R. 688-9).*

The final contention of both the Board and Piedmont is that State did not protect its own rights adequately before the Board and therefore cannot complain if it was injured (Pied. Br., pp. 23-4; Board Br., pp. 36-42). As the Board's decision could not have been anticipated, State could not have complained prior to its petition for reconsideration. In that petition, State alleged that as a result of the Board's action in certifying Piedmont for routes for which it had not applied, State had been deprived "of a fair hearing and due process of law" (R. 566 [10, 13]). In addition, on oral argument upon that petition, counsel for State made in detail the very argu-

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*It is not without significance to demonstrate what applicants generally considered the law to be, that Piedmont's counsel, in spite of the presence in this case of twenty-five other applicants who, according to the Board's and Piedmont's present theory, were all competitors of Piedmont, stated in his oral argument with respect to Piedmont's principal north-south route (R. 554):

> "Now the only other applicant for this route from Winston-Salem to Washington * * * is Virginia Stagelines, * * * *"

And he confined his argument as to this route to that "only other applicant". No one would have been quicker to rise in righteous indignation than Piedmont had the Board certified to State the Piedmont routes from Winston-Salem to Washington.

ments which have since been advanced in the courts (Tr. 16641-4; R. 605).

Specifying the manner in which State was aggrieved by the lack of due process in certifying Piedmont, counsel for State pointed out that there was no other applicant for State's trans-Appalachian routes and that

> "State made only casual cross-examination of Piedmont assuming that it could not possibly be considered an applicant for the routes for which State was applying. Similarly State put in no rebuttal evidence against Piedmont which it could have done if State had known that Piedmont could be considered for these routes" (R. 603-604).*

This specification of the manner in which State was deprived of due process of law was almost in the precise language in which the Board had refused to certificate Midwest in the *North Central Case*, 7 C. A. B. 639, *supra*, because its application gave no notice to others of any aspirations for the routes found necessary and accordingly (p. 674):

> "The other parties were thus deprived of an opportunity to submit evidence and to cross-examine as to the qualifications of Midwest to operate the more extensive route system herein contemplated."

Contrary to the Board's intimation, State had no opportunity (Board Br., p. 36) to introduce evidence as to Piedmont's shortcomings,** for the Board did not reopen the hearings but simply

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*These statements were in no way limited, as the Board erroneously suggests, to a showing that Piedmont had inadequate overhaul facilities (Board Br., p. 39). As the record indicates, that specific argument was made in answer to a proposition advanced by Piedmont's counsel and had nothing to do with State's general grievance (R. 608).

**Had State been given such opportunity it could have produced substantial evidence on this score (see *e. g.*, R. 629 [78-81]).

ordered a reargument and that reargument was limited to two questions, neither one of which dealt with Piedmont's fitness, willingness and ability to operate the route in question (R. 573-4).

Accordingly, the situation here presented is entirely different from *Market Street R. Co.* v. *Comm'n.*, 324 U. S. 548, much relied upon by Piedmont (Pied. Br., pp. 23-4) and the Board (Board Br., p. 37). There, this Court held (p. 558) that the issue of reasonableness of rates was plainly specified from the beginning of the proceeding; it was so stated in the Commission's original order instituting the proceeding; it was specified in the notice served upon the company. Under these circumstances, the company was fully advised of the issue tried by the Public Service Commission and, indeed, adduced much evidence on that very issue. The failure of the company to realize that the Commission might utilize in its decision evidence received without objection and without limitation, as to the price at which the company had offered to sell its properties, was held to be the company's own fault. On the record in the present case, however, it is impossible to see how State should have known that Piedmont was an applicant for that which it never sought.

5. NEITHER PIEDMONT NOR THE BOARD MEETS THE BASIC ISSUE RELATING TO THE ARBITRARY AND CAPRICIOUS ACTION OF THE BOARD IN HOLDING PIEDMONT FIT, WILLING AND ABLE TO OPERATE THE TRANSPORTATION CERTIFICATED (Reply to Board Br., pp. 42-52; Pied. Br., pp. 29-34).

The issues involved in the holding that Piedmont was fit, willing and able lie much deeper than the arguments of the Board and Piedmont indicate. State has never contended that the court is entitled to weigh evidence or to substitute its own

judgment for that of the Board. The court below did not hold that in order to be fit and able an applicant must "come forward with plans showing how it actually proposes to operate over each portion of the routes awarded" (Board Br., p. 43).

What State has contended and what the court below held was that the Board acted capriciously and arbitrarily when it certificated Piedmont in the absence of a scintilla of evidence relating to the operations certificated.

The statute under which the Board purported to act requires a finding "that the applicant is fit, willing, and able to perform *such* transportation properly" (Civil Aeronautics Act, § 401[d]; State Br., App. A, pp. ii-iii). An abstract finding of fitness, willingness and ability is not sufficient. The finding must relate to "such transportation", *i.e.*, the transportation certificated.

The Board has recognized, as we have shown (State Br., pp. 69-73), that the application of this Congressional standard compels the successful applicant to submit "a plan for the conduct of the service", *i.e.*, the service to be certificated. Furthermore *"each applicant"* must "meet the test of public convenience and necessity by showing a need for the service" and, among other things, "a cost to the Government in mail compensation bearing a reasonable relationship" to the probable use of the service and the character and quality thereof (*Local, Feeder, and Pick-up Air Service*, 6 C. A. B. 1, 4).

It is State's contention, concurred in by the court below in an incidental portion of its decision, that the foregoing tests adopted by the Board pursuant to the statute cannot reasonably be met by an applicant who concededly has produced no plan for the service certificated, has made no showing for the need of the service certificated, and has shown no cost to the Government for such service.

The Board itself has, prior to the present decision, consistently taken the same position (see cases cited State Br., pp. 69-74).

An example should be sufficient to show the arbitrary and capricious nature of the decision made in the complete absence of relevant evidence. Piedmont, as required by the Board's previous rulings, furnished an estimate of cost to the Government in mail pay for the operation covered by Piedmont's application. This was stated to be $330,785.31 for the first twelve months of operation (R. 383). The public records of the Board show that during the first twelve months of the operation certificated Piedmont actually received in mail pay $1,100,541.75 and has presently pending an application for increase in such pay. Can it be said that the Board acted reasonably on the basis of Piedmont's evidence, having no relation to the cost of the service actually certificated, when it made its decision in favor of Piedmont? How can the Board possibly have weighed the factor of cost to the Government in mail pay on any other than an arbitrary and capricious basis when it had before it not a single figure or estimate on Piedmont's part as to what such cost would be with respect to the transportation which the Board certified to Piedmont?

Illustrations could be multiplied. How could the Board possibly have had an intelligent or reasonable basis for deciding that Piedmont had a plan for operating adequate schedules into proper airports or had a proper concept of the utilization of airports or of the general type of equipment needed to fly the routes in question where there was not one scintilla of evidence on Piedmont's part with relation to the operation certificated?*

*The Board suggests, *dehors* the record, that its judgment has been vindicated by Piedmont's prompt and successful operation of the routes

Detailed comment seems unnecessary as to the Board's and Piedmont's specific arguments relating to evidence claimed to support the Board's findings of Piedmont's fitness, willingness and ability. It is not disputed by either the Board or Piedmont that not an item of evidence, not an exhibit, not a schedule, not a plan of operation was offered on behalf of Piedmont with respect to the trans-Appalachian operation certified. Whether the evidence would support a finding that Piedmont was fit, willing and able to operate the routes for which it applied and did introduce evidence seems wholly immaterial as a matter of law.*

The Board's argument that it may act without any evidence as to the transportation found necessary seems based, in part, upon the theory that it is not permitted to attach to a certificate of public convenience and necessity any condition restricting the right of an air carrier "to add or to change schedules, equipment, accommodations and facilities for performing the authorized transportation" (Civil Aeronautics Act, § 401[f]; Board Br., p. 48). By this provision Congress recognized that a carrier should be free within the limits of statutory safety requirements to change equipment, accommodations and facilities, and to change schedules to conform to technical progress and changing needs. This does not indicate any intention on the part of Congress to permit the Board to certify a new carrier

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certified (Board Br., pp. 40, 49, fn. 22). State denies that Piedmont commenced its operations promptly except in so far as it rushed into a premature operation on some of the routes certified for the evident purpose of presenting a *fait accompli* immune to court review (it has so argued; see, *e.g.*, Pied. Br., pp. 34-5). State further denies, on the basis of the Board's own records relating to Piedmont's accidents and its motion for increased mail subsidy, that Piedmont's operation has been safe, efficient or successful.

*A proposition laid down by the Board itself in *North Central Case*, 7 C. A. B. 639, *supra*, in rejecting the application of Midwest (at pp. 673-4).

without regard to that carrier's plans for operating on the routes to be certified. It seems absurd to contend that the Board, in making a supposedly reasoned decision under the Civil Aeronautics Act, may disregard all of the important factors relating to the operation to be certified. The plan of operation submitted by a carrier would appear to be the one essential piece of evidence needed to determine whether the carrier intends to meet the public need and whether it intends to operate and is capable of operating, at a reasonable cost to the Government, transportation in conformity with the basic safety requirements. The Board did not find anywhere that Piedmont submitted such a plan, or indeed any plan, for the routes certificated.

Finally, both Piedmont and the Board resort to an ineffective legalism when they urge that State, through some sort of a forensic estoppel by counsel, withdrew the objection as to the arbitrary and capricious nature of the Board's conclusion that Piedmont was fit, willing and able (Board Br., pp. 39, 45-6, fn. 19; Pied. Br., pp. 30-1).

In fact, most of State's petition for reconsideration by the Board dealt with the failure of the evidence to support the findings in favor of Piedmont (see Index R. 566 [i-ii]). In the petition, State plainly asserted (R. 566 [38]):

> "Consequently, it is impossible to consider Piedmont fit, willing and able for the routes awarded to it." (See also R. 566 [53-4].)

In oral argument counsel did not disown the petition (Tr. 16624-36). On the contrary, he contended at length that there was no evidence to support the finding of fitness as to Piedmont. A part of this discussion was introduced as follows (R. 602):

> "Turning now to the next important element in fitness, willingness, and ability, namely, 'a plan for the conduct of the service made by competent personnel.' It is on this phase of the case that we believe Piedmont completely falls down."

Much detailed argument to support this contention then follows (Tr. 16626-36; certified transcript referred to pursuant to R. 688-9). This phase of the case was concluded by counsel's statement (Tr. 16636):

> "On the other hand, Piedmont showed no plan for the operation of these routes, demonstrated no appreciation of scheduled air transportation matters * * * nor did it have financial and cost exhibits relating either to these routes or the character of operation which the Board intended."

In the light of this argument, counsel's intent in the passage quoted by the Board (Board Br., p. 46, fn. 19) is plain. He was endeavoring to make the point that an abstract finding of fitness, willingness and ability could be of no avail to Piedmont as Piedmont had neither applied for the routes in question nor put in any evidence as to its fitness respecting such routes. Counsel continued the line of thought with the suggestion that if the Board "selected American Air Lines for a route that they didn't apply for and didn't put in any evidence for and weren't an applicant, I would say that that didn't belong to them no matter how able they were" (R. 607).

6. THERE IS NO BASIS FOR THE CONTENTION THAT THE COURT BELOW LACKED POWER TO DIRECT THE BOARD TO ISSUE A CERTIFICATE, EITHER PERMANENT OR TEMPORARY, TO STATE (Reply to Board Br., pp. 52-60; Pied. Br., pp. 34-7).

State, of course, agrees with the contention that "no court may grant an authorization which a regulatory agency has re

fused" (Board Br., p. 52) and that the courts cannot dictate the manner in which agency discretion is to be exercised (Board Br., p. 53). The latter proposition is restated in the second exception to Section 10 of the Administrative Procedure Act, upon which the Board relies (Board Br., pp. 56-7).

These well-settled principles do not, however, control the issue here made.

The Board does not seem seriously to question State's fundamental proposition that where an administrative agency has exercised all discretion entrusted to it by Congress, the action, which Congress has directed should follow the exercise of that discretion, may be compelled by the courts. The Board's principal emphasis seems to be on arguments variously worded to leave the impression that there is still some discretion which the Board must exercise prior to granting the certificate pursuant to the direction of Congress. Of what this discretion is claimed to consist is not very clearly specified. Two principal points, however, appear to be made:

1. The Board contends that there were other applicants for the routes certificated who would be equally entitled to the certificate in question (Board Br., p. 54). This argument is contradicted by the record. The fact is that the Board, with respect to each of the applicants named in its present argument (Eastern Airlines, Delta Airlines and Pennsylvania Central Airlines), has specifically exercised its discretion to eliminate them from consideration. None of them, it may be added, applied for the route pattern covered by State's application, which the Board has now held to be the one required by public convenience and necessity. Eastern's application in the general area here involved was rejected on the ground that the service found necessary "can be provided better by a local operator as part of a feeder system than by a trunk-line operation" (R. 565 [876]).

The application of Pennsylvania Central was rejected because it had made no showing that its "services are required at this time" (R. 565 [875]). Delta was eliminated on the ground that the service in question "should be provided on a local or feeder basis rather than by a trunk-line carrier" (R. 565 [874]).

It was after a consideration of these applicants, as well as all other applicants, both trunk-line and feeder, that the Board exercised its discretion and found (R.565 [901]):

> "The choice has thus narrowed down to State Airlines and Piedmont Aviation, and which of these two companies should be selected to conduct the proposed service presents a close and difficult question."

Piedmont having now been eliminated, as a matter of law, it is obvious that State is the only applicant with respect to which the Board made the findings required by the statute.

2. The Board's other contention seems to be (Board Br., p. 57) that the finding of public convenience and necessity must be made not with respect to the transportation but with respect to State and that, therefore, the finding already made that public convenience and necessity required the transportation applied for by State is inadequate. This contention disregards both the statute and the Board's prior position not only in other cases but in its present brief. The statute requires that the Board must find that the successful "applicant is fit, willing, and able". But the finding as to public convenience and necessity is to be "that such *transportation* is required by public convenience and necessity" (Civil Aeronautics Act, § 401[d]; State Br., App. A, pp. ii-iii). The Board having made that specific finding with respect to the transportation here involved (State Br., p. 26), the statutory discretion on this score has been completely exhausted. Indeed, the Board

has recognized this, for, referring to its previous cases, it states (Board Br., p. 30):

> "* * * in an area proceeding the Board *first determines the routes required in the public interest* and thereafter selects the applicant found to be best qualified to perform the required service."

The Board can hardly be serious in its contention that State is not qualified for the certificate in question because the transportation authorized thereby does "not follow in all respects the specific routes and plan of operations proposed by State" (Board Br., p. 53). A peculiar logic must impel this argument when made by the Board which has insisted that Piedmont may be certificated for routes not covered by its application at all. State, of course, has never contended that the addition of some intermediate or adjacent points is beyond the Board's power. Certainly, here, where State's application is, for all practical purposes, identical with the routes found required by public convenience and necessity, there can be no claim that State is disqualified from receiving the certificate. The Board's argument appears to be made more as a rhetorical *tour de force* than a serious contention.

If the court is powerless to compel the Board to issue a certificate after it has made all of the determinations entrusted to it by Congress (*i.e.*, it has found the transportation in question to be required by public convenience and necessity and has found State fit, willing and able), then there will be conferred upon the Board an additional discretion which Congress did not intend at all. If the Board's position prevails, then it is entitled in its own unlimited discretion, irrespective of its findings, to determine whether or not a certificate shall be issued. In that event, there is no criteria whereby the Board's action is to be judged. Such a view might not only result in

creating an unconstitutional delegation of powers but is certainly at odds with the Congressional intent expressed in Section 401(d) of the Civil Aeronautics Act through the careful establishment of the criteria which the Board was to apply in determining whether to issue a certificate and the Congressional mandate that upon making the specified findings the Board "shall" issue the certificate.

The same answer applies to Piedmont's argument (not made by the Board) that the use of the word "may" in the second subdivision of Section 401(d) of the Civil Aeronautics Act shows an intention by Congress to confer untrammeled discretionary power to decide whether to issue a certificate even though the findings which would seem to require such issuance have been made (see Pied. Br., p. 37).* Such, plainly, was not the intention of Congress. The word "may" is not substituted in subdivision (2) for the word "shall" of subdivision (1). Congress in subdivision (2) gave the Board only additional discretion as to the length of time for which a certificate might issue by providing "the Board may issue a certificate * * * for such limited period of time as may be required by the public convenience and necessity". The proviso thus contained in subdivision (2) does not change the principle recognized by the Board that Section 401(d) as a whole "directs" the Board to issue a certificate (either permanent or temporary) once the appropriate findings have been made (State Br., pp. 23-4).

The Board's citation of *McGrath* v. *Zander*, — F. 2d — (Board Br., p. 57), emphasizes its misconception of the holding in *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134. In the *Zander* case, like in the *Broadcasting Co.* case, the ad-

*Contrary to Piedmont's suggestion as to what is here involved, State's application was for both a permanent and temporary certificate (R. 19).

ministrative agency had failed to make one of the requisite findings upon the basis of which its discretion alone was required to be exercised. There is nothing in either case, however, which militates against the rule laid down in *United States* v. *Hines*, 70 App. D. C. 36, 44, 103 F. 2d 737, 745, and other cases previously cited (State Br., p. 35), that when no further discretion is to be exercised, the administrative agency may be compelled by the courts to act in accordance with its findings.

That is the only contention which State has advanced with respect to Section 10(e) of the Administrative Procedure Act. Nothing in the memorandum attached to the Attorney General's letter and annexed to the report of the Senate Judiciary Committee (Board Br., pp. 57-8), contradicts such a construction of Section 10(e). Presumably, the Attorney General in his reference to *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, did not mean to go beyond the holding in that case and his comment, accordingly, has no relation to the situation where an applicant under the Civil Aeronautics Act has been found fit, willing and able and public convenience and necessity has been found. In such a situation there is no room for further "continuous administrative control". Only the ministerial action directed by Congress remains.

Upon the facts in this case, the only way to make the "adequate, fair, effective, complete, and just determination" intended by Congress under the Administrative Procedure Act,* is to require of the court below a proper mandatory order compelling action in accordance with the Board's discretion already exercised in State's favor. To permit the Board, in carrying out the mandate of the court below, to reconsider

*See State Br., pp. 31-2.

State's application in competition with Piedmont, which has been permitted by the Board to operate these routes for many months, not only nullifies State's appeal to the courts but is so contrary to the basic concepts of fair play in administrative proceedings that, it is submitted, this Court should not countenance such procedure.

CONCLUSION

In No. 158 the determination by the court below that it lacked power to make an order compelling the Board to issue a certificate of public convenience and necessity, either permanent or temporary, to State should be reversed with instructions to issue such order; in Nos. 157 and 159 the judgment below should be affirmed.

December 2, 1949.

Respectfully submitted,

FREDERICK W. P. LORENZEN,
Counsel for State Airlines, Inc.

PHILIP SCHLEIT,
Of Counsel.

Office - Supreme Court, U. S.
FILED
JUL 2 1949
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 158

STATE AIRLINES, INC.,
Cross-Petitioner,

against

CIVIL AERONAUTICS BOARD and
PIEDMONT AVIATION, INC.,
Cross-Respondents.

CROSS-PETITION FOR WRIT OF CERTIORARI

STATE AIRLINES, INC.,
Cross-Petitioner,

By FREDERICK W. P. LORENZEN,
Counsel for Cross-Petitioner.

PHILIP SCHLEIT,
Of Counsel.

Dated: July 5, 1949.

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PIEDMONT AVIATION, INC.,
Cross-Respondents.

CROSS-PETITION FOR WRIT OF CERTIORARI

To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, STATE AIRLINES, INC. (hereinafter referred to as "State"), prays that a writ of *certiorari* issue to the United States Court of Appeals for the District of Columbia Circuit to review that portion of its decision and judgment, entered April 6, 1949, in which that court declined to make an order requiring the Civil Aeronautics Board to issue a certificate of public convenience and necessity to State—a decision predicated upon the holding that the court lacked power, in spite of the provisions of Section 10 (e) of the Administrative Procedure Act of 1946,[1] to make such an order.[2]

[1] 60 Stat. 243 (1946); 5 U. S. C. § 1009(e).

[2] On this score, the court concluded on the last page of its opinion:

"Whether or not it is so that the Board has already made the requisite findings which would entitle State to a certificate, we

The refusal by the Court of Appeals to issue the order in question is embodied in a decision otherwise in favor of State. The Civil Aeronautics Board (hereinafter referred to as the "Board") and the intervenor below, respondent Piedmont Aviation, Inc. (hereinafter referred to as "Piedmont"), have filed petitions for writs of *certiorari* to review the decision and judgment of the Court of Appeals reversing, on State's appeal, the determination of the Board which had awarded a certificate of public convenience and necessity to Piedmont and had denied State's application therefor.

A certified transcript of the record in this case, including the proceedings in the court below as to which the writ is sought, has been filed in this Court by the Civil Aeronautics Board in connection with its petition for writ of *certiorari*. This cross-petition is made on the same record. The printed record filed with the original petition is also utilized on this cross-petition.

Basis for Jurisdiction

Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1). The decision and judgment, to a portion of which the writ here sought is to be directed, were entered on April 6, 1949.[1] This Court has recently, in

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agree with respondent that this court lacks the power to order the issuance of a certificate which the Board has declined to issue. We do not read the allegedly pertinent section of the Administrative Procedure Act with its mandate that this court shall 'compel agency action unlawfully withheld,' as requiring that result. On the contrary we regard ourselves bound in this respect by the decision of the Supreme Court in *Federal Communications Commission* v. *Pottsville Broadcasting Co.* [309 U. S. 134]."

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[1]The opinion of United States Court of Appeals for the District of Columbia Circuit has not yet been reported; it is also dated April 6, 1949.

Transcontinental & Western Air, Inc., Petitioner v. *Civil Aeronautics Board*, 335 U. S. 884 (Adv. Sheet),[1] issued a writ of *certiorari* to review a judgment, construing a section of the Civil Aeronautics Act, made by the United States Court of Appeals for the District of Columbia Circuit, in an action such as the present one involving an order of the Civil Aeronautics Board. While here the statute to be construed is the Administrative Procedure Act, the type of problem presented (*i.e.*, construction of a previously unconstrued section of a federal statute) appears to be undistinguishable from the one which was reviewed in the *Transcontinental & Western* case, *supra*.

Summary and Short Statement of Matter Involved

On October 21, 1941, State filed with the Civil Aeronautics Board its original application for a certificate of public convenience and necessity authorizing local mail, passenger and property transportation connecting points in the southeastern United States with points across the Appalachian Mountains in the Ohio River Valley and the Great Lakes basin (R. 16740).[2] The Board, for one reason or another, postponed consideration of State's original application for some years.[3] As a result of Board action, State filed various other applications all of which, however, retained the basic east-west route system connecting southeastern points with the Ohio Valley cities across the Appalachian Mountains (App. 1-26).[4] The applications became

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[1]Decided on the merits April 18, 1949.

[2]This type of citation is to the unprinted certified transcript of record to which the parties, pursuant to stipulation, may make reference.

[3]See *Colonial Air. et al., Atlantic Seaboard Op.*, 4 C. A. B. 392, 399-400, and *Eastern A. L. et al., Great Lakes-Florida*, 6 C. A. B. 429, 452-4.

[4]This type of citation is to the printed Joint Appendix to the briefs of the parties in the court below. This Appendix has been stipulated by all parties to be a part of the printed record here.

progressively more local and restricted as the Board awarded the routes which had been applied for by State to others. State finally went to the hearings here involved before the Board's trial examiners on the basis of a route system connecting the coastal and Piedmont regions of the Carolinas and Virginia with terminal points of Cincinnati and Louisville on the western side of the Appalachian range (App. 508-9; see map which is a part of the opinion below).

In the meanwhile, on June 2, 1944 (App. 31-41), Piedmont filed its application covering mail, passenger and property transportation combined with pick-up[1] service over routes constituting a network covering nearly all towns in North Carolina and a substantial number of towns in South Carolina and Virginia. Piedmont's proposed routes extended slightly into Georgia, Maryland, Pennsylvania and Virginia. One route extended through West Virginia, along the Ohio River Valley to Cincinnati.

Before any hearings were held on Piedmont's application, Piedmont, on March 8, 1945, amended it (App. 62-70). By this amendment, Piedmont separated its application into two parts seeking separately authority to transport mail, passengers and property in the conventional manner on certain proposed routes, and mail, express and property using the pick-up method on other proposed routes (App. 64-70).

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[1]"Pick-up Service" is service of points without stops whereby mail is picked up from a ground installation by a device on the plane, while in flight (*All American Aviation, Pick-up, Delivery Service*, 2 C. A. B. 133, 137, f.n. 3). This service needs no airports except the termini and is obviously unsuited for passengers and conventional transportation of property. The Civil Aeronautics Board has held that the combination of pick-up and passenger service is unsafe and will not be authorized (*All American Aviation, Combination Service*, 8 C. A. B. 241, 242, Adv. Sheet).

In this amendment, Piedmont expressly abandoned its application to carry passengers, mail and property in the conventional manner except with respect to the very limited routes predominantly in a northerly and southerly direction (all east of the Appalachians) running (1) from Washington, D. C., to Hagerstown, Maryland, then through the Shenandoah Valley to Roanoke, Virginia, and ultimately to Columbia, South Carolina; (2) from Norfolk, Virginia, to Roanoke, Virginia, and (3) from Wilmington, North Carolina, to Knoxville, Tennessee (App. 69-70; see map which is part of opinion below).

The passenger, mail and property routes applied for thus specifically stopped short of crossing the Appalachians into the Ohio Valley and indeed entered those mountains at only one or two points. Even the application for pick-up service which would appear to have no relevancy in this controversy relating to passenger, mail and property certification abandoned any pretense of connecting southeastern points with the Ohio Valley cities across the Appalachian Mountains, although one insignificant segment of the proposed pick-up routes did reach Charleston, West Virginia.

The applications of State, Piedmont and a number of other applicants were ultimately consolidated for hearing before the Board's examiners (App. 27).

At such hearings, State introduced substantial evidence establishing that public convenience and necessity required the certification of its proposed routes joining the Carolinas and Virginia with the Ohio Valley cities to the west of the Appalachian Mountains (App. 213-9, 245; 234; State's Exhs. G, 2-30, App. 79-104, 111-40). State likewise produced voluminous evidence relating to proposed schedules, revenue estimates, cost estimates based upon approved multi-motored aircraft, air-

mail estimates, weather data, etc. relating to its proposed routes (State's Exhs. 31-82; App. 140-220). All of State's evidence emphasized and amplified State's application for routes from Virginia and the Carolinas west to the Ohio River Valley cities on the other side of the Appalachian range.

Piedmont, on the other hand, introduced evidence relating solely to its application covering principally north-south routes east of the Appalachian Mountains (App. 283-474). Piedmont introduced no evidence as to public convenience and necessity for transportation between the Carolinas and Virginia and Ohio River Valley points. It introduced no evidence as to its fitness or ability to operate such transportation. It offered no plan for such operation. It introduced no schedules and no evidence of financial ability to operate such routes. It made no cost estimates based upon the operation of multi-motored aircraft which would be required over the mountainous terrain in question but limited its evidence[1] to a proposed single-engined aircraft (App. 368) to be operated on its north and south routes which, as its counsel emphasized, avoided the mountains "crossing the Blue Ridge Mountains at only one point, the southern-most end of those mountains where they are very low"[2] (App. 553).

The other applicants also introduced evidence as to their proposals which are, however, not now relevant.

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[1]As the court below concluded (Opinion, p. 8):

> "In the instant case, we have presented the still stronger situation wherein, even at the time of the Board's finding that Piedmont was fit, willing, and able, there was *no* evidence of Piedmont's appropriate qualification for the awarded routes."

[2]But, as the court below pointed out, the certificate issued to Piedmont authorized transportation over the highest mountains east of the Mississippi (Opinion, p. 9, f.n. 18).

The examiners found public convenience and necessity for the transportation proposed by State, found State fit, willing and able to render such transportation and recommended State for a portion of the trans-Appalachian routes for which it had applied (App. 508-11, 513-6, 521-2).

The examiners also recommended for Piedmont a portion of its predominantly north-south route, east of the Appalachian Mountains, from Winston-Salem, North Carolina, to Washington, D. C., and the branch from Roanoke, Virginia, to Norfolk, Virginia (App. 518-9, 520).

State, Piedmont and Public Counsel (as well as some of the other participants in the hearings) filed exceptions to the examiners' report. State excepted generally to the failure of the examiners to recommend its entire integrated system of east-west routes and excepted specifically to the failure to recommend for State the route from Cincinnati to Norfolk, Louisville to Norfolk and Charlotte, North Carolina, to Chattanooga, Tennessee (App. 528-31). Public Counsel sided substantially with State in connection with these exceptions (App. 535-7, 549, 550).

Piedmont's exceptions dealt only with the failure to extend its north-south route southerly from Winston-Salem to Chester and Camden and to the failure to recommend its route from Wilmington, North Carolina, to Asheville and Knoxville, Tennessee (App. 533-4).[1]

Upon argument before the Board no one took the position that Piedmont should be awarded the certificate for the transportation for which State had applied.

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[1]Piedmont's exception (App. 534) to the failure to recommend it for a "pick-up" service certificate is not here material.

The Board in its original decision (7 C. A. B. 863; App. 565 [863]),[1] concluded that public convenience and necessity required only transportation for which Piedmont had *not* applied (*id.* [p. 888]). The Board, almost in the language of State's evidence, concluded that the transportation over the Appalachian range applied for by State was required by public convenience and necessity (App. 565 [892-5] and *cf.* App. 115, 120, 217, 219, 234, 245).

Having thus found, pursuant to the statutory requirement, that public convenience and necessity required the east-west transportation for which State had applied, the Board turned to the selection of the carrier to be certificated. The Board rejected summarily the applications of six companies seeking certificates for local service (App. 565 [898-90]). It then concluded (App. 565 [901]):

> "The choice has thus narrowed down to State Airlines and Piedmont Aviation, and which of these two companies should be selected to conduct the proposed service presents a close and difficult question. Both have engaged in various phases of aeronautics for a period of years.
>
> * * * *
>
> "Each applicant has shown an adequate financing program, and each has demonstrated an energetic interest in the conduct of the operations."

The Board selected Piedmont principally because it had conducted certain pilot training programs and had engaged in other fixed base activities, whereas State had concentrated on charter operations and thus did not have as large a staff. The Board added, however, that there was no doubt that State

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[1]This decision has been bound into the printed Appendix here at page 565; the page citations following in brackets are also the page citations to Volume 7 of the Civil Aeronautics Board Reports in which the decision is reported.

could obtain the requisite personnel but the Board was of the opinion that inauguration of service might take State somewhat longer.[1] (App. 565 [902]).

State filed its petition for rehearing (App. 566) specifically contending that the Civil Aeronautics Board could not legally certify Piedmont because it did not meet the requirements of the Civil Aeronautics Act in that (a) Piedmont had not applied for the routes awarded to it;[2] (b) it had not furnished any evidence or plan for such transportation and had failed to demonstrate its fitness as a scheduled carrier in many other basic respects, and (c) the certification of Piedmont violated due process of law for it had not been considered by anyone as an applicant for the trans-Appalachian routes awarded to it.[3]

The Civil Aeronautics Board, however, adhered to its original decision (App. 610), but in so doing emphasized that

[1]The Board's decision was made on April 4, 1947, six years after State's original application for the routes in question. The sudden emphasis upon speed in commencing operation is hard to understand even if the Board's conclusion in this respect had been correct (a conclusion which State contends was baseless).

[2]The statute under which the Board purported to act limits the Board's power to the issuance of a certificate "authorizing the whole or any part of the transportation *covered by the application* * * *" [49 U. S. C. § 481 (d) (1), (2); 52 Stat. 987 (emphasis supplied)].

[3]Such certification, without notice to State, Public Counsel or anyone else, was not only a violation of general concepts of due process of law, but a violation of specific provisions of the Civil Aeronautics Act which require an application to be in writing specifying information required by the Board and require service either of the application or due notice thereof upon all interested persons and the public [49 U. S. C. § 481 (b), (c); 52 Stat. 987]; it was further a violation of the regulations of the Civil Aeronautics Board which, pursuant to the statute, require complete disclosure of the routes applied for specifying points to be served and require notice with respect to such information to be given to all interested persons (Regulation of the Civil Aeronautics Board, Serial Nos. 284 and 285; Amendment No. 3 of Section 238.1 of the Economic Regulations); it was also a violation of Section 5(a) of the Administrative Procedure Act [5 U. S. C. § 1004(a); 60 Stat. 239] requiring all interested persons to be "timely informed of * * * the matters of fact and law asserted".

it had found State fit, willing and able to conduct the transportation in question. Thus, the Board said (App. 612):

> "States ability to build up a qualified organization is not questioned. That it could do so was implicit in the finding that the carrier was fit, willing, and able."

Upon appeal by State to the United States Court of Appeals for the District of Columbia Circuit, the Board's determination was reversed (Judge Edgerton dissenting without opinion). The court held that Piedmont was not entitled to the certificate in question because it had not applied for the transportation certificated and because there was no evidence to show that it was fit, willing and able to conduct the transportation in question. The action of the Board in certifying Piedmont was held to have been (a) without sanction of the Civil Aeronautics Act and (b) "arbitrary and capricious".

The court remanded the case to the Board for proceedings not inconsistent with the court's opinion.

The court below, however, denied State's request made pursuant to Section 10(e) of the Administrative Procedure Act of 1946[1] for an order compelling the Civil Aeronautics Board to issue a certificate of public convenience and necessity, either temporary or permanent, to State (see footnote 2 p. 1, *supra*).

State's request for such an order was based on the theory that the Board had made all determinations of fact which Congress had entrusted to it under the Civil Aeronautics Act,

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[1]60 Stat. 237, 243; 5 U. S. C. § 1009 (e). This section provides that a court having jurisdiction to review the action of an administrative agency "shall (A) compel agency action unlawfully withheld or unreasonably delayed" as well as "(B) hold unlawful and set aside agency action, findings, and conclusions found to be" arbitrary, capricious, contrary to law, including constitutional provisions, lacking in proper procedure required by law, unsupported by substantial evidence or unwarranted by the facts.

Sections 401(d) (1) and (2). After the elimination of Piedmont, as a matter of law, there remained only the ministerial act of issuing the certificate to State. This appears from the following undisputed facts:

(1) The Board specifically found public convenience and necessity for the transportation applied for by State (App. 565 [892-6]).

(2) The Board found State fit, willing and able to conduct the transportation in question (App. 612).

(3) Under the statute [Civil Aeronautics Act, Section 401(d)(1)][1] the Board "shall" thereupon issue to applicant a permanent certificate unless the Board elects to issue a temporary certificate under Section 401(d)(2) of the Act —one or the other the Board must do.

(4) If it be assumed, *arguendo*, that the statute permits the Board, as between competing applicants, all of whom have been found fit, willing and able, to choose the most fit, willing and able, the Board likewise made that choice in State's favor.

(5) The Board, *qua* State, exercised its discretion by eliminating every other *applicant* for these local routes (App. 565 [896-901]).

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[1]The section in question provides [49 U. S. C. § 481 (d) (1); 52 Stat. 987]:

"(d)(1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied."

(6) Thereupon, the Board stated (App. 565 [901]) "The choice has thus narrowed down to State Airlines and Piedmont Aviation, and which of these two companies should be selected to conduct the proposed service presents a close and difficult question."

(7) Piedmont, not being an applicant within the statute, for the transportation certificated, as the court below found, is eliminated as a matter of law.

(8) The Board, therefore, by its own findings and the exercise of its own discretion, determined that State was the only fit, willing and able *applicant* for the transportation found required by public convenience and necessity. Under the Civil Aeronautics Act, the Board, therefore, has no further discretion to exercise but it "shall" issue a certificate to State [Section 401(d)], either permanent or, if it decides to act under the permissive alternative clause, temporary.

As the Board did not perform this purely ministerial act, the Court of Appeals, upon reversing the Board and holding that Piedmont was not an applicant as a matter of law for the transportation certified to it, had the power and, indeed, the duty under the Administrative Procedure Act to "compel agency action unlawfully withheld or unreasonably delayed" [5 U. S. C. § 1009(e)]. The court below, however, held that it did not have such power solely by reason of the decision made by this Court in *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134 (see quotation from opinion, p. 1, *supra*, f.n. 2).

This decision by the court below, which State claims disregards the plain language of the Administrative Procedure Act

and misapplies *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, is the subject matter of the present cross-petition for writ of *certiorari*.

Questions Presented

1. To what extent do the decisions in this Court require the federal courts of this country generally to abdicate their powers to grant affirmative relief with respect to actions by administrative agencies (such as the Civil Aeronautics Board) which have wide powers of economic life and death over inhabitants of this country? To state it another way: Is the doctrine of *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, to be extended or delimited? Must the power of the courts to grant effective relief recede further and leave the citizen at the mercy of the administrative agency and, if that be the trend of this Court's decisions,[1] has it been arrested to some extent by the Administrative Procedure Act of 1946? If so, to what extent has that Act achieved its purpose?

2. Did the United States Court of Appeals for the District of Columbia Circuit err in refusing to issue an order compelling the Civil Aeronautics Board to issue to State a certificate of public convenience and necessity, either permanent or temporary, for the transportation found by the Board to be necessary for the public convenience?

3. Did the United States Court of Appeals for the District of Columbia Circuit err in holding and adjudging that it lacked the power to make an order compelling the Civil Aero-

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[1]But compare *Ashbacker Radio Corp.* v. *F. C. C.*, 326 U. S. 327.

nautics Board to issue to State a certificate of public convenience and necessity, either permanent or temporary, for the transportation found by the Board to be necessary for the public convenience?

4. Did the United States Court of Appeals for the District of Columbia Circuit err in holding and adjudging that Section 10(e) of the Administrative Procedure Act of 1946 [60 Stat. 243; 5 U. S. C. § 1009(e)] did not empower it to make an order compelling the Civil Aeronautics Board to issue to State a certificate of public convenience and necessity, either permanent or temporary, for the transportation found by the Board to be necessary for the public convenience?

5. Did the United States Court of Appeals for the District of Columbia Circuit err in holding and adjudging that *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, applied to the instant case and was a binding adjudication that the United States Court of Appeals lacked power to make an order compelling the Civil Aeronautics Board to issue to State a certificate of public convenience and necessity, either permanent or temporary, for the transportation found by the Board to be necessary for the public convenience?

6. Where an administrative agency has, as in this case, exercised all discretion entrusted to it by the applicable act of Congress, does the United States Court of Appeals for the District of Columbia Circuit have the power to make an order compelling such administrative agency to issue to the aggrieved party the certification to which it is entitled under the act of Congress?

Reasons Relied On for the Allowance of These Writs

State invokes the exercise of this Court's power under Title 28, United States Code, Section 1254(1), to grant writ of *certiorari* herein prayed for upon the following grounds:

1. The decision below for which review is sought would seem to come precisely within the grounds for review suggested in subdivision 5(c) of Rule 38 of the Rules of this Court. In deciding that it lacked power under Section 10(e) of the Administrative Procedure Act of 1946 [60 Stat. 243; 5 U. S. C. § 1009(e)] to make the order requested by State, the United States Court of Appeals for the District of Columbia Circuit has decided (a) a question of general importance, and (b) a question of substance relating to the construction of a statute of the United States which has not been, but should be, settled by this Court.

It would seem appropriate to have a timely construction by this Court of the scope and meaning of that portion of the Administrative Procedure Act which states the duty of the reviewing court to be that "It shall (A) compel agency action unlawfully withheld or unreasonably delayed". If this language is to have any meaning whatever, it would seem at least to be applicable, as in the present case, where the administrative agency has made all findings of fact in State's favor and has come to an erroneous conclusion as a matter of law. The Administrative Procedure Act would seem to confer upon the courts at least the power heretofore exercised by writ of mandamus to compel ministerial action wrongfully withheld. See *George Allison & Co.* v. *Interstate Commerce Com'n*, 70 App. D. C. 375, 378, 107 F. 2d 180, 183, and

United States v. *Hines*, 70 App. D. C. 36, 44, 103 F. 2d 737, 745; see also *Public Service Com'n* v. *State, ex rel.*, 184 Ind. 273, 278.

2. Review is here also proper under that portion of subdivision 5(c) of Rule 38 of the Rules of this Court for the reason that the court below has not given proper effect to *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134. If that decision had any relevancy here, it cannot detract from the court's duty and power under the Administrative Procedure Act enacted after the date of that decision.

In any event, the court below improperly held that the *Broadcasting Co.* decision was here relevant. This Court decided in the *Broadcasting Co.* case only that the Court of Appeals had no power by mandamus to compel procedure in the Federal Communications Commission contrary to the Commission's own established rules. In the *Broadcasting Co.* case, the Federal Communications Commission had not made findings of fact in favor of the petitioner there and had not therefore exercised its discretion under the Act of Congress in petitioner's favor. The error which the Federal Communications Commission had committed, consisted in an application of an erroneous standard of law in making a finding of fact that petitioner was insolvent. Upon correcting the legal error, the Court of Appeals could do no more than to remand the case for the making of new findings of fact upon the basis of a proper legal theory. This Court held that the Court of Appeals might not thereafter by mandamus decide the procedure to be adopted by the Federal Communications Commission in hearing pertinent evidence and making new findings.

In the present case, however, as above indicated in the statement, the Civil Aeronautics Board under Sections 401(d)(1)

and (2) has made, *qua* State, all of the discretionary findings of fact which Congress has entrusted to it. It found that a part of the transportation covered by State's application in the language of the statute was "required by public convenience and necessity" (App. 565 [892-6]); it also found as a fact, as required by the statute, that State was "fit, willing, and able" (App. 612). Upon these findings of fact, it erred in not awarding the certificate of public convenience and necessity to State by reason of a misapplication of the law and awarded the certificate instead to Piedmont which was not, as the statute requires, an applicant for the transportation in question. When the court below corrected this legal error, ordered the certificate to Piedmont vacated on the ground that it was not authorized to receive such a certificate, the Board, on the basis of the findings with respect to State, had no choice under the Civil Aeronautics Act for that act states that the Board, upon making the findings of fact here made, "shall issue a certificate authorizing the whole or any part of the transportation covered by the application" [Civil Aeronautics Act, § 401(d)(1)].[1] The only alternative given to the Board under the next subsection is to issue, instead of the permanent certificate required by Section 401(d)(1), a temporary certificate. Plainly, on the findings of fact made by the Board, State is entitled to one or the

---

[1]The language of the statute seems unambiguous and the Board itself has recognized its mandatory character recently in Docket No. 1973, *et al., Fairbanks-Nome Intermediate Points Case*, decided March 31, 1949. The Board said (p. 2 mimeographed Adv. Sheets):

> "Section 401(d) *directs* the Board to issue a certificate authorizing the whole or any part of the transportation covered by an application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of the Act, and the rules, regulations, and requirements of the Board thereunder, and that such transportation is required by the public convenience and necessity." (Emphasis supplied.)

other, as a matter of law. It is equally plain that the court below had the duty and power to compel the Civil Aeronautics Board to issue the one certificate or the other to State. The holding that *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, deprived the court of power to make such an order, is a decision which should be reviewed by this Court.

3. The foregoing questions are important not only to State, but are of general importance in connection with all appeals to the various United States Courts of Appeals from orders of administrative tribunals. As is evidenced by the decisions in *Securities Comm'n* v. *Chenery Corp.*, 332 U. S. 194, and *Federal Comm'n* v. *Broadcasting Co.*, 309 U. S. 134, administrative agencies (at least prior to the effective date of the Administrative Procedure Act) have not always or, indeed, generally yielded gracefully to court decisions correcting their determinations. Indeed, the attitude of some of the agencies upon remand has been to reach the same result which had judicially been declared to be erroneous upon some different technical basis beyond the limited power of court review. Thus, the citizen who took the successful appeal obtained no benefits from his court victory. In the present case, where the court below held that the Board had erred in awarding the certificate of public convenience and necessity to Piedmont and plainly intimated that such certificate should have been issued to State, the Board may, nevertheless, endeavor[1] to devise a method for

[1]State does not concede that such endeavor would be lawful, and, perhaps, upon a second appeal, there would be another reversal. But, taking into account the shortness of human life and the limits upon plaintiff's resources resulting from the Board's very determination reversed in the court below, it is possible that the Board and Piedmont may ultimately succeed through State's sheer exhaustion. After all, State has been actively endeavoring to obtain the certificate of public convenience and necessity in question since 1941. The struggle cannot be carried on indefinitely.

avoiding the court decision entirely unless the Court of Appeals has the power to make the mandatory order envisaged by Section 10(e) of the Administrative Procedure Act. Without such order, State's economic doom may be sealed just as surely as if it had been the loser rather than the victor in the court below. As Pyrrhus said at Asculum, "One more such victory and we are lost." Congress in enacting the Administrative Procedure Act provided no such hollow remedy.

4. The review here sought is thus particularly appropriate for the decision below may leave State in the position of petitioner in *Ashbacker Radio Corp.* v. *F. C. C.*, 326 U. S. 327. Piedmont has the certificate to which State is entitled. As this Court pointed out in the *Ashbacker* case (p. 332):

> "Legal theory is one thing. But the practicalities are different. For we are told how difficult it is for a newcomer to make the comparative showing necessary to displace an established licensee."

5. As this is a cross-petition for writ of *certiorari*, the writ should be granted if the petitions of the Board and Piedmont are granted in order to bring before this Court the entire controversy which was adjudicated below.

Conclusion

WHEREFORE, your petitioner respectfully prays that writ of *certiorari* be issued out of and under the seal of this Court, directed to the United States Court of Appeals for the District of Columbia Circuit, commanding that court to certify and to send to this Court for its review and determination on a day certain to be named therein, a full and complete transcript of the record in this case and that that portion of the judgment

of said United States Court of Appeals to which this cross-petition for writ of *certiorari* is directed may be reversed by this Court and that your petitioner have such other and further relief in the premises as to this Court may seem just; and your petitioner will forever pray.

Dated: July 5, 1949.

STATE AIRLINES, INC.,
Cross-Petitioner,

By FREDERICK W. P. LORENZEN,
Counsel for Cross-Petitioner.

PHILIP SCHLEIT,
Of Counsel.

No. 158

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JUL 29 1949
CHARLES ELMORE CROPLEY
CLERK

No. 168

In the Supreme Court of the United States

OCTOBER TERM, 1949

STATE AIRLINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD AND PIEDMONT AVIATION, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE CIVIL AERONAUTICS BOARD

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 158

STATE AIRLINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD AND PIEDMONT AVIATION, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE CIVIL AERONAUTICS BOARD

The Civil Aeronautics Board entered an order granting a certificate of public convenience and necessity to Piedmont Aviation, Inc., authorizing it to engage in certain transportation by air which the Board had determined to be required by public convenience and necessity. On a petition for review of this order filed with the United States Court of Appeals for the District of Columbia Circuit by the present petitioner, State Airlines, Inc., that court set aside the Board's order and remanded the case to the Board for further proceedings not inconsistent with the court's opinion. Petitions for writ of certiorari to review this

decision have been filed by the Board (No. 157) and by Piedmont (No. 159).

The petition for writ of certiorari filed in the instant case seeks review of the refusal of the court below to compel the Board to issue a certificate of public convenience and necessity to petitioner. The Government believes that the petition does not present any important question of federal law upon which this Court has not yet passed and that the court below correctly held that it was without power to compel the Board to issue a certificate of public convenience and necessity to petitioner. But the Government does not oppose granting the petition if this Court should conclude that, if it grants the petitions filed by the Board and Piedmont, all aspects of the decision to which those petitions relate should be brought before this Court for review.

PHILIP B. PERLMAN,
Solicitor General.

EMORY T. NUNNELEY, JR.
General Counsel, Civil Aeronautics Board.

JULY 1949.

CHART 1

CINCINNATI
OHIO
MAYSVILLE
PORTSMOUTH
VANCEBURG
ASHLAND
HUNTINGTON
CHARLESTON
W.VA
KY.
VA.
BECKLEY
PRINCETON
BLUEFIELD
WYTHEVILLE
PULASKI
MARION
ABINGDON
BRISTOL
JOHNSON CITY
KINGSPORT
MORRISTOWN
BULLS GAP
MASCOT
JEFFERSON CITY
KNOXVILLE
TENN
N.C.
BRYSON CITY
SYLVA
HENDERSONVILLE
WAYNESVILLE
CANTON
ASHEVILLE
MORGANTON
MARION
HICKORY
NEWTON
LENOIR
N WILKESBORO
ELKIN
MT AIRY
GALAX
TRYON
GAFFNEY
GREENVILLE
SPARTANSBURG
TOCCOA
SENECA
WILLIAMSTON
ANDERSON
CORNELIA
GAINSVILLE
LAURENS
NEWBERRY
RUTHERFORDTON
LINCOLNTON
MAIDEN
SHELBY
KINGS MT
GASTONIA
FORT MILL
CONCORD
CHARLOTTE
MACKSVILLE
STATESVILLE
KANNAPOLIS
ALBEMARLE
MONROE
ROCK HILL
LANCASTER
KERSHAW
CAMDEN
COLUMBIA
LEXINGTON
SALISBURY
THOMASVILLE
ASHEBORO
WINSTON-SALEM
GREENSBORO
HIGH POINT
MADISON
MARTINSVILLE
BLACKSBURG
RADFORD
ROANOKE
ROCKY MOUNT
BEDFORD
LYNCHBURG
BUENA VISTA
WAYNESBORO
STAUNTON
HARRISONBURG
SHENANDOAH
LURAY
FRONT ROYAL
WINCHESTER
MARTINSBURG
HAGERSTOWN
FREDERICK
MD.
VA.
WASHINGTON
MANASSAS
WARRENTON
CULPEPER
ORANGE
CHARLOTTESVILLE
FARMVILLE
ALTAVISTA
CHATHAM
DANVILLE
REIDSVILLE
SOUTH BOSTON
RICHMOND
PETERSBURG
BLACKSTONE
VICTORIA
CHASE CITY
EMPORIA
SUFFOLK
NORFOLK
WILLIAMSBURG
NEWPORT NEWS
FRANKLIN
VA.
N.C
ROXBORO
WARRENTON
ROANOKE RAPIDS
LITTLETON
OXFORD
HENDERSON
ELIZABETH CITY
EDENTON
PLYMOUTH
WASHINGTON
GREENVILLE
WILSON
TARBORO
ROCKY MOUNT
RALEIGH
SILER CITY
SANFORD
BURLINGTON
HILLSBORO
DURHAM
SMITHFIELD
GOLDSBORO
DUNN
CARTHAGE
PINEHURST
SOUTHERN PINES
FAYETTEVILLE
TROY
KINSTON
NEW BERN
MT OLIVE
WARSAW
CLINTON
ST PAULS
LAURINBURG
LUMBERTON
FAIRMONT
DILLON
WHITEVILLE
WILMINGTON
WALLACE
BURGAW
JACKSONVILLE
BEAUFORT
ATLANTA
BUFORD
WINDER
ATHENS
ELBERTON
CALHOUN FALLS
GREENWOOD
S.C.
GA.
FLORENCE
TIMMONSVILLE
SUMTER
MANNING
ORANGEBURG
ST GEORGE
CHARLESTON

LEGEND

- ● Scheduled Stop
- o Flag Stop
- – Mail Pick-up

PIEDMONT AVIATION, INC.

Specific Routes Proposed By
Application Dated May 29, 1944
Total Route Miles—4965

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FILED
JUL 2 1949
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1949

No. 159

PIEDMONT AVIATION, INC., *Petitioner*

against

STATE AIRLINES, INC., *Respondent*

PETITION OF PIEDMONT AVIATION, INC., FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

CHARLES H. MURCHISON
Attorney for Petitioner,
Piedmont Aviation, Inc.

STOCKTON, ULMER & MURCHISON
1016 Ring Building
Washington 6, D. C.
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Point IV. Should this Court fail to reverse the order of the Court of Appeals in its entirety, said order should at least be modified to the extent that it shall provide, instead of invalidating Piedmont's certificate in its entirety, that there be continued in effect that portion of the routes as to which Piedmont unquestionably applied and proved its fitness, willingness and ability 26

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IN THE

Supreme Court of the United States

OCTOBER TERM 1949

No.

PIEDMONT AVIATION, INC., *Petitioner*

against

STATE AIRLINES, INC., *Respondent*

PETITION OF PIEDMONT AVIATION, INC., FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The Petitioner, **Piedmont Aviation, Inc.,** respectfully shows to this Court:

STATEMENT OF THE MATTER INVOLVED.

Petitioner is an air carrier engaged in transporting persons, property and mail by aircraft in the United States. It operates pursuant to a certificate of public convenience and necessity which was issued to it by the Civil Aeronau-

ties Board on December 12, 1947 under the Civil Aeronautics Act of 1938, as amended (52 Stat. 977 ff., 49 U. S. C. §§ 401-680). State Airlines, Inc., the Respondent here, was an unsuccessful applicant before the Civil Aeronautics Board for the certificate which was issued to the Petitioner.[1]

Section 401(a) of the Act provides that no air carrier shall engage in any air transportation without holding a certificate issued by the Board and authorizing such transportation. Sections 401(b) and (c) provide for the filing of applications for certificates in such form and containing such information as the Board may require, for the giving of public notice of such applications, and for the holding of hearings thereon. Section 401 (d) provides that the Board shall issue a certificate authorizing "the whole or any part of the transportation covered by the application" if it finds: (1) "that the applicant is fit, willing and able to perform such transportation properly", and (2) "that such transportation is required by the public convenience and necessity."

Pursuant to section 401(b) of the Act, Piedmont filed an application with the Board on May 29, 1944. (28-61). This application requested that Piedmont be awarded a certificate authorizing the transportation of passengers, property and mail on the numerous specific routes shown in color on Chart 1, which is inserted opposite this page.

---

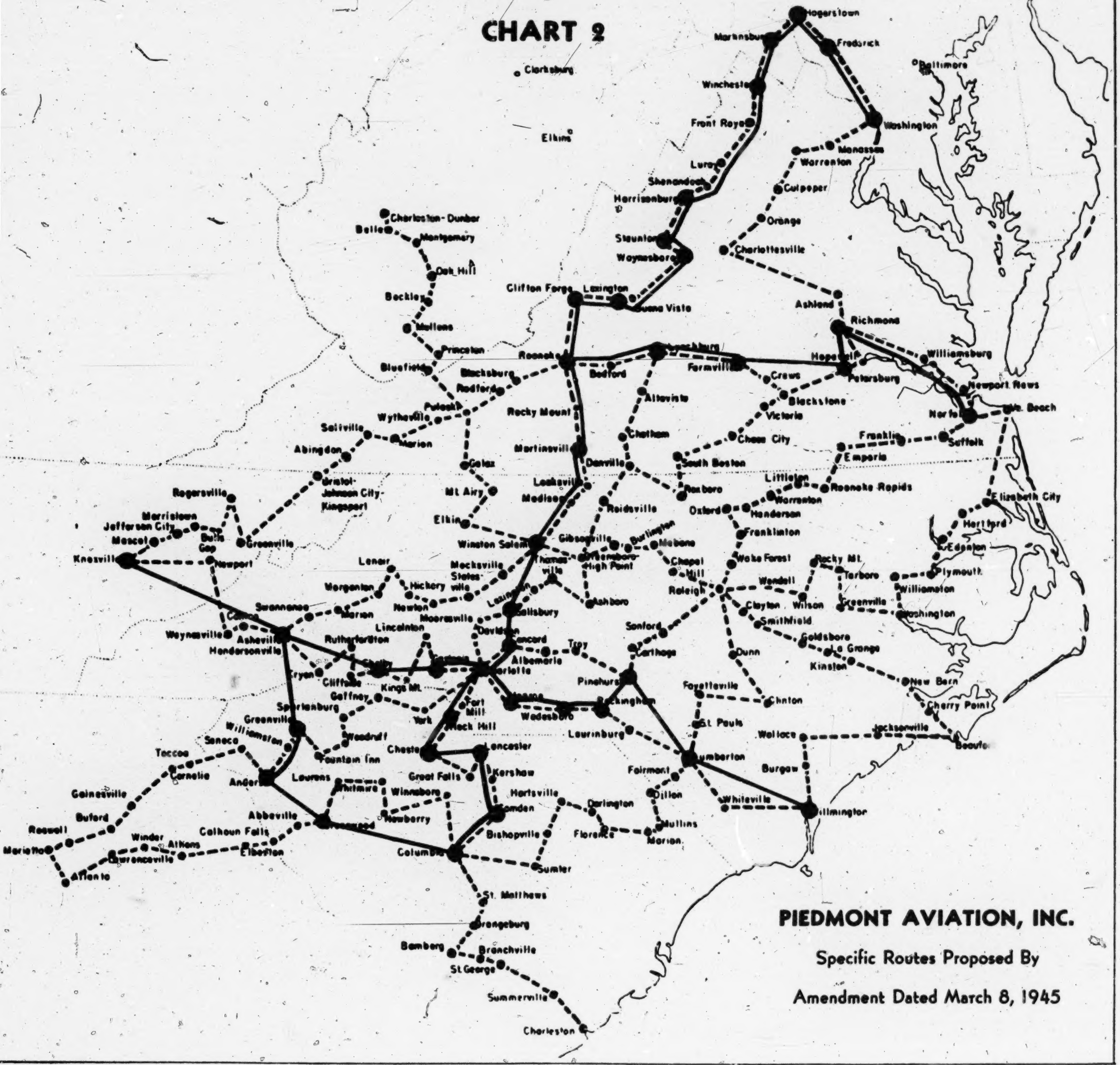
[1]In the court below, State was the petitioner seeking review of the Board's order issuing the certificate, the Board was the respondent, and Piedmont, your Petitioner, was an intervenor. In addition to the present petition of Piedmont, the Solicitor General is filing a petition for certiorari on behalf of the Board. Piedmont urges that both these petitions be granted.

In this petition and accompanying brief the Civil Aeronautics Board and its predecessor, the Civil Aeronautics Authority, will be called the "Board". The Civil Aeronautics Act of 1938 (Act of June 23, 1938, c. 601, 52 Stat. 977 ff., 49 U. S. C. § 401-680) will be called the "Act". Petitioner will be called "Piedmont", and State Airlines, Inc., will be called "State".

All italics are ours unless otherwise specified.

Numerical references in parentheses refer to pages of the printed Record filed with this Court.

CHART 2



PIEDMONT AVIATION, INC.

Specific Routes Proposed By

Amendment Dated March 8, 1945

Study of Chart 1 will reveal that these routes form a comprehensive network in the broad area bounded by Washington, D. C., Norfolk, Wilmington, N. C., Charleston, S. C., Atlanta, Knoxville and Cincinnati. The routes have a total length of 4,965 miles. (43).

In addition to requesting the specific routes shown on Chart 1, Piedmont's application also requested "such modification of such routes as the Board may find public convenience and necessity require" and "such other and further relief, general and specific, under section 401 [of the Act] as the Board may deem appropriate." (31, 41).

By February 24, 1945, numerous other corporations had also filed applications for certificates authorizing air transportation in the southeastern part of the United States. On that date the Board entered an order which "consolidated into one proceeding" the application of Piedmont described above, certain applications which had been filed by State, and numerous applications by other parties. This proceeding was designated the Southeastern States Case. (27).

Thereafter, about March 8, 1945, Piedmont filed an amendment to its application. (62-71). Under the amendment Piedmont specifically applied for a certificate authorizing the transportation of passengers, property and mail on certain routes and the transportation of property and mail on other routes. These routes are set forth on Chart 2 on the opposite page. Chart 2 shows that here again Piedmont specifically applied for a comprehensive network of air routes.[2] The routes total 5,763 miles in length, and cover a broad area bounded by Washington, Norfolk, Wilmington, N. C., Charleston, S. C., Atlanta, Knoxville, and Charleston, W. Va. (653, 652).

---

[2] The Court of Appeals in its opinion below printed a map which purports to show the routes for which Piedmont specifically applied (676, top map). *However, that map is erroneous because it failed to print most of the routes for which Piedmont did specifically apply. The true picture is set forth in Charts 1 and 2 in this petition.*

Piedmont's application as amended also contained a general request for authority to carry *passengers* as well as mail and property "on the routes described herein," referring to *all* the routes described in the application. (41, 63).

Furthermore, Piedmont's application as amended requested "such modification of such routes [referring again to all the routes specified in the application] as the Board may find public convenience and necessity require," and such "further relief, general and specific, under section 401 as the Board may deem appropriate." (63, 41).

A hearing was held before an Examiner of the Board in June 1945. At that time Piedmont, State and 23 other applicants presented evidence in support of their applications. After considering the evidence and hearing argument, the Board issued its original opinion on April 4, 1947. (565; 7 C.A.B. 863-941).

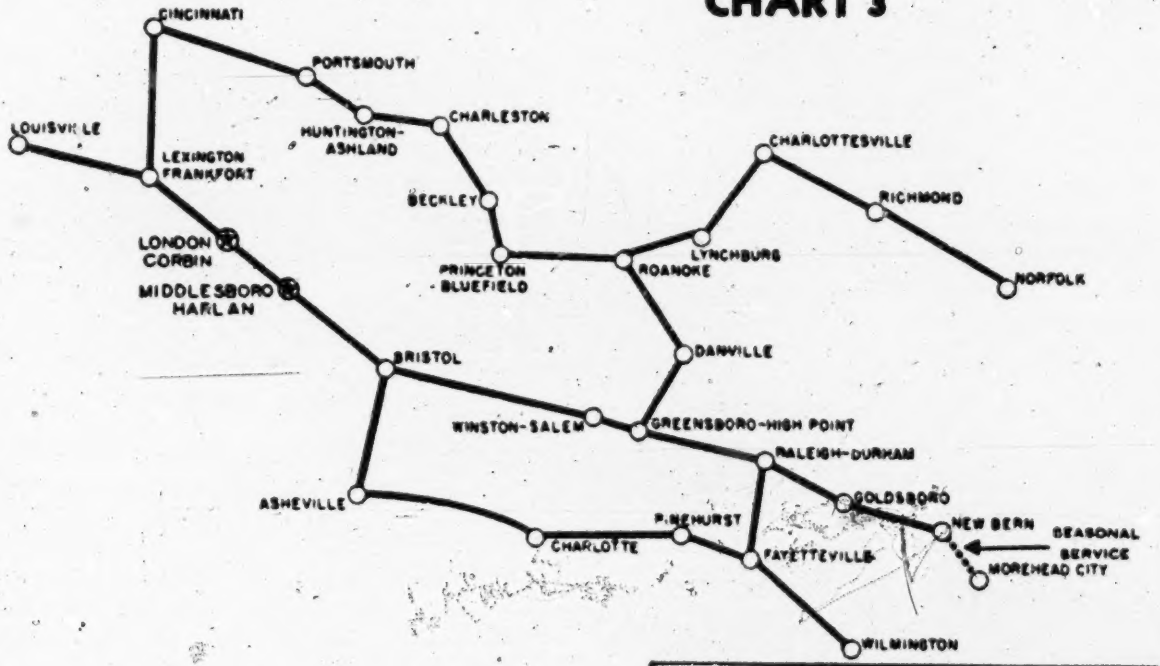
In its opinion the Board found that the public convenience and necessity require the transportation of passengers, property and mail on the routes shown on Chart 3, which is inserted opposite this page. (565, at 892-896). A study of this Chart will show clearly that the routes selected by the Board are covered by Piedmont's application. Whereas Piedmont had applied for specific routes extending for many thousands of miles (and for modification of these routes as the Board might see fit), the Board found service required on only 1,700 route miles. The routes selected by the Board cover a smaller area than that which Piedmont proposed to serve, and they conform to a substantial degree with routes proposed by Piedmont.

In its opinion of April 4, 1947, the Board made the following additional findings:

(1) Piedmont was an applicant to perform the transportation which the Board had thus found to be required. (565, at 898, 901).

(2) Three of the applicants (Gillespie, Blue Grass and Commonwealth) "met the test of fitness, willingness

CHART 3


CINCINNATI
PORTSMOUTH
LOUISVILLE
HUNTINGTON-ASHLAND
CHARLESTON
LEXINGTON FRANKFORT
BECKLEY
CHARLOTTESVILLE
RICHMOND
LONDON CORBIN
MIDDLESBORO HARLAN
PRINCETON - BLUEFIELD
ROANOKE
LYNCHBURG
NORFOLK
BRISTOL
DANVILLE
WINSTON-SALEM
GREENSBORO-HIGH POINT
RALEIGH-DURHAM
GOLDSBORO
ASHEVILLE
PINEHURST
NEW BERN
SEASONAL SERVICE
CHARLOTTE
FAYETTEVILLE
MOREHEAD CITY
WILMINGTON
LEGEND
ROUTES AUTHORIZED FOR PIEDMONT 4/4/47
BOARD ADDED THESE POINTS 10/13/47

and ability", but the business interests of those companies were centered in Tennessee, Kentucky and Ohio, and the public interest would be better served by awarding a certificate to some one of the other applicants "whose activities are conducted in, and who have close ties with, the area [North Carolina and Virginia] embracing a major portion of the local system herein prescribed." (565, at 899).

(3) Piedmont was fit, willing and able to perform the transportation found required, and was better qualified than State (or any other applicant) to perform such transportation. (565, at 899-902)

After the issuance of this original opinion, State petitioned the Board for reconsideration insofar as the Board had awarded the route system in question to Piedmont rather than to State. (566). As requested by this petition, the Board reopened the case and heard argument on the points raised by State. (573). *On December 12, 1947 the Board issued a supplemental opinion and unanimously reaffirmed its award to Piedmont.* (610-620) This supplemental opinion expressly reaffirmed the findings made in the original opinion, including the finding that Piedmont was in fact an applicant for the routes awarded. (616).

On the same day, December 12, 1947, the Board issued the certificate of public convenience and necessity to Piedmont. Under the terms of the certificate and of the Act Piedmont commenced airline operations within a short period of time, and is continuing to render service on the routes awarded it.

A petition for review was filed by State with the United States Court of Appeals for the District of Columbia Circuit, and Piedmont intervened. On April 6, 1949 that court rendered a decision which would reverse the order of the Board on the following grounds:

1. Piedmont was not an applicant to perform the transportation authorized by the certificate. (681)

2. The Board was without the power to issue a certificate to any applicant which did not specifically describe in its application, with no more than slight variations, the exact route system which the Board might find to be required. (682, 683)

3. Piedmont was not fit, willing, and able to render the transportation which was authorized. (683, 685)

4. The orders and findings of the Board were "arbitrary and capricious and lacked the support of substantial evidence." (686)

JURISDICTIONAL STATEMENT.

This Court has jurisdiction to review the judgment and decree of the United States Court of Appeals by virtue of the following statutory provisions: 28 U. S. C. § 1254 (see Pub. L. 773, 80th Cong., 2nd Sess. ch. 646), and § 1006 (f) of the Civil Aeronautics Act of 1938 (52 Stat. 1024; 49 U. S. C. § 646 (f)).

THE QUESTIONS PRESENTED.

1. Is it within the power of the Court of Appeals to substitute its own judgment for the judgment of the Board as to whether the transportation authorized by the certificate was covered by Piedmont's application?

By Section 1006 (e) of the Act, the findings of facts by the Board are made conclusive, if supported by substantial evidence. By Section 401 (b) of the Act the form of the application and the information contained therein are such as the Board may require. By Section 1001 the Board is authorized to conduct its proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice.

The Act does not require an application to describe the authority requested in terms of cities to be served or routes to be followed. Piedmont's original application proposed

service specifically to at least 23 of the 28 cities found by the Board to require service in the area under consideration and, like most of the other applications, requested a certificate with such modifications of the proposed route plan as the Board might find to be required by the public convenience and necessity. As amended, Piedmont's application requested even broader operating authority, and the Board expressly found that Piedmont was in fact an applicant for the routes awarded.

The court below stated that this question (as to whether Piedmont was an applicant for the routes awarded) was a "fundamental question of fact". (681) But notwithstanding this statement, the court below erroneously substituted its own finding for the finding of the Board.

2. If, in fact, a portion of the transportation authorized by the certificate was not covered by Piedmont's application, is the Board for that reason without power under the Act to include in the certificate the points not so covered?

The Act provides that upon the appropriate findings, the Board shall issue a certificate authorizing "the whole or any part of the transportation covered by the application." Nowhere in the Act is there found any provision which prohibits the Board from adding to the certificate the obligation to serve points not covered by the application. On the contrary, Section 401 (f) provides that "there shall be attached to the exercise of the privileges granted by the certificate . . . such reasonable terms, conditions and limitations as the public interest may require".

This Court has held, under similar provisions of the Motor Carrier Act, that the Interstate Commerce Commission has clear power to include in a certificate authority for service substantially greater than the carrier had asked, and to many points the carrier had not requested. *Chicago, St. Paul, Minneapolis and Omaha Ry. Co.* v. *U. S.*, 322 U. S. 1.

The Court of Appeals, in its opinion, completely and erroneously ignored Section 401 (f) of the Act and said decision of this Court.

3. When the Board in its expert judgment has found that Piedmont was fit, willing and able to perform the transportation, may that determination be set aside by the Court merely because the evidence offered by Piedmont was not sufficient, in the judgment of the Court, to show its fitness, willingness and ability to perform a portion of the transportation which involved operations west of the Appalachians or over mountainous terrain?

The court below set aside the Board's finding that Piedmont was fit, willing and able to conduct the service authorized. (683-685.) In doing so, the court clearly overstepped the bounds of permissible judicial review.

Piedmont submitted abundant evidence of its fitness, willingness and ability. Counsel for State, the rival applicant, of necessity conceded to the Board that Piedmont was fit, willing and able to conduct the service authorized. (607.) Section 1006 (e) of the Act provides that no objection to an order of the Board shall be considered by the court unless such objection shall have been urged before the Board. Therefore, it was error for the court below even to consider the fitness, willingness and ability of Piedmont.

Furthermore, the court's conclusion to set aside the Board's finding was based solely on the substitution of its own judgment for that of the Board as to the inferences to be drawn from evidence actually in the record. The court's previous erroneous finding (that Piedmont was not an applicant for service west of the Appalachians) was compounded here by the erroneous finding that Piedmont's evidence could not show its fitness, willingness and ability to operate across the mountains.

4. If all of the foregoing questions should be decided adversely to Piedmont, should not the judgment of the Court be a modification of the Board's order only to the extent of eliminating from Piedmont's certificate a few points west of the Appalachians?

The surgeon here has resorted to amputation at the neck to cure a disease of the foot. There has never been a question in anyone's mind as to the fitness, willingness or ability of Piedmont to operate that portion of the routes lying in North Carolina and Virginia (which is the major portion of the routes certificated), or that its application was sufficiently broad to cover that portion of the routes. If there is any question as to the propriety of certificating Piedmont to operate the western portion of the routes, or if it should eventually be determined that the entire route system should be operated by some other applicant, the public interest would obviously be better served by remanding the case to the Board with the eastern portion of the certificate still in effect, subject to being vacated upon further hearing by the Board. Under such a decree the Board could permit the operation of the western segments by an exemption order issued pursuant to Section 416 (b) of the Act, while further hearings were being held. This procedure would permit the communities of five States to continue to receive the benefits of an existing air transportation system to which the Board found these communities entitled more than two years ago.

REASONS FOR ALLOWANCE OF THE WRIT.

1. The United States Court of Appeals for the District of Columbia Circuit has decided an important question of federal administrative law which has not been, but should be, settled by this Court. This important question involves the conclusiveness of Board findings as to the scope of applications before the Board for certificates of public convenience and necessity.

2. The Court of Appeals has not given effect to an applicable decision of this Court. The decision in the case of *Chicago, St. Paul, Minneapolis and Omaha Ry. Co.* v. *United States*, 322 U. S. 1, should have required said court to hold that the Board had the power to include in Piedmont's certificate points in the general area under consideration which Piedmont had not specifically asked to serve.

3. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings with respect to review of the expert judgment of an administrative body for a specialized field as to call for an exercise of this Court's power of supervision.

These reasons are discussed in Piedmont's attached brief.

WHEREFORE, your Petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the District of Columbia Circuit, commanding said Court to certify and send to this Court a full and completed transcript of the record and of the proceedings of the said Court of Appeals had in the case numbered and entitled in its Docket No. 9748, STATE AIRLINES, INC., *Petitioner* vs. CIVIL AERONAUTICS BOARD, *Respondent*, PIEDMONT AVIATION, INC., *Intervenor*, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the order of said Court of Appeals be reversed by this Court.

CHARLES H. MURCHISON
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Piedmont Aviation, Inc.

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Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM 1949

No.

PIEDMONT AVIATION, INC., *Petitioner*

against

STATE AIRLINES, INC., *Respondent*

BRIEF OF PIEDMONT AVIATION, INC. IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The decision of the court below appears in the Record before this Court. (675.) It is not yet officially reported.

The statement of this Court's jurisdiction, and the statement of the case, have already been set forth in the attached petition for writ of certiorari.

SPECIFICATION OF ERRORS.

I.

The Court of Appeals erred in holding that Piedmont was not an applicant for the routes awarded. The Board's finding that Piedmont was an applicant for said routes was a finding of fact with respect to which the Court could not substitute its own judgment for the expert judgment of the Board.

II.

The Court of Appeals erred in holding that the Board could not include in a certificate routes and points not applied for by the recipient of the certificate.

III.

The Court erred in substituting its own judgment for the expert judgment of the Board and setting aside the Board's finding of fact that Piedmont was fit, willing and able to operate the routes awarded to it.

IV.

The Court of Appeals erred in directing that the Board's order be completely set aside rather than modified only to the extent required to conform to the principles announced by the court's decision.

SUMMARY OF ARGUMENT.

The Board has been endowed by Congress with unusually broad powers to establish the route pattern, and to control the development, of an air transportation system which now blankets the nation and also encircles the globe. A narrow circumscription of these powers, in the manner of the court below, contravenes the clear Congressional intent in delegating the powers, and furthermore, denies to the Board the reasonable freedom of action which any administrative agency must have.

It is the Board, not the court, which has the expert judgment necessary to give proper weight to all the facts of record and to make ultimate findings of fact. This well-established principle is particularly applicable in a case such as this, where the Board had before it a factual record covering thousands of pages and involving the air service needs of a large area of this country. In the exercise of its expert judgment the Board has considered the multitudinous facts in this record and has found that Piedmont was in fact an

applicant for the routes awarded it. The court below improperly usurped the function of the Board when it set aside this finding of fact.

The Act provides that an application for a certificate shall be in such form and shall contain such information as the Board shall require; and it further provides that the Board's findings of fact shall be conclusive, if supported by substantial evidence. Here the Board found that Piedmont's application met the requirements of the Board and that Piedmont was in fact an applicant for the routes certificated. Since there was ample and very substantial evidence to support this finding of fact, the court below acted improperly when it substituted its own finding for the finding of the Board. As we have shown in the attached petition, Piedmont applied for specific routes serving nearly all the cities finally certificated and also conforming to a substantial degree to the very routes which were ultimately awarded. Furthermore, Piedmont's application (like that of other applicants) contained a "catch all" clause and a request for relief under Section 401 of the Act, the clear effect of which was to make Piedmont an applicant for any routes in the area which the Board might find required. Hence the Board's finding of fact was entirely proper and must be sustained.

Even if it be assumed *arguendo* that Piedmont was not in fact an applicant for certain portions of the route system awarded it, the Board nevertheless had full power to award the certificate in question to Piedmont. The decision of this Court in *Chicago, St. Paul, Minneapolis and Omaha Ry. Co.* v. *United States*, 322 U. S. 1, clearly establishes the power of the Interstate Commerce Commission to award a certificate under similar circumstances, and should be controlling here. Section 401 (f) of the Act empowers the Board to include in a certificate "such reasonable terms, conditions and limitations as the public convenience and necessity may require". Construed in such a manner as to serve the public interest, this power surely means that the Board, when

certificating an applicant for services applied for, may add "terms" and "conditions" requiring other service for which no application was made but which the Board has found required. The court below wholly ignored the controlling effect of the decision of this Court and of Section 401 (f).

Furthermore, the court below erroneously set aside the Board's finding that Piedmont was fit, willing and able to operate the routes awarded it. The Board's finding of fact was supported by substantial evidence, indeed by overwhelming evidence, of Piedmont's fitness willingness and ability to serve the very routes for which it was certificated. The finding was set aside by the court below on the untenable ground that *none* of Piedmont's evidence on this point could be considered by the Board as to Piedmont's fitness, willingness and ability to serve points for which Piedmont did not apply. This was a matter to be decided by the expert judgment of the Board, not by the legalistic hypotheses of a reviewing court.

If this Court should fail to reverse the decision below in its entirety, it should at least order a modification of the decree proposed by the court below. The decree below is unreasonably harsh because it would apparently require the Board to rescind Piedmont's certificate in its entirety. Any such rescission would necessarily mean that the many cities in question would be deprived of an existing air service even though all parties to this case are agreed that these cities have a substantial need for the service. Therefore, should this Court do nothing else, it should certainly modify the decree to conform to the principles announced below. Those principles would permit the Board to continue part of Piedmont's certificate in effect (and issue an exemption order as to the remainder) while further proceedings were being held. By modifying the decree in this way this Court would avert irreparable injury to the public interest.

POINT I.

Piedmont was an applicant for the routes awarded to it. The Board's finding to this effect was a finding of fact which the Court is without power to set aside.

As shown by Chart 1 in the attached petition, Piedmont's original application specifically proposed service to all of the points included in the certificate except the few on the Y-shaped extension resulting from the inclusion of service to Louisville. Chart 2 in the attached petition shows that Piedmont's amended application also specifically proposed service to nearly all the cities certificated, and it specifically proposed service along a very substantial portion of the routes certificated. Also there was a request by Piedmont for modification of such routes as the Board might see fit, and for plenary relief under section 401 of the Act. The Board, after considering all these requests and the nature of the proceeding in which they were made, expressly found that Piedmont was an applicant for the routes awarded. It was error for the court below to substitute its own finding for that of the Board on this point.

The map which the court below included in its opinion (676, top map) does not correctly reflect the situation because it admittedly purports to show only a part of the service proposed by Piedmont in its application. The court assumed to modify the actual scope of the application by eliminating all points described therein except those for which Piedmont applied in the sense that it "actively, by brief and by oral argument before the Board, sought". (679). While the court adopted with ease and unconcern this, its own concept of a modification of the application, it wholly ignored the fact that before the certificate was finally issued, Piedmont, by brief, by oral argument, by letter and by formal written motion, was earnestly and vigorously requesting the Board to issue to it a certificate in the identical form in which it was finally issued. The court would thus recognize that form of modification of a request which conforms to its own judgment as to the proper result, and

deny recognition to those forms of modification which conform to the result arrived at by the Board.

However, the fundamental error of the court was its refusal to give proper effect and meaning to Piedmont's application "for such modification of such routes as the Board may find public convenience and necessity require" and for "such other and further relief, general and specific, under Section 401 [of the Act] as the Board may deem appropriate." In concluding that these requests were not intended to make Piedmont an applicant for the routes which the Board found required, the court had recourse to dictionary definitions of the word "modification" in total disregard of the history and circumstances surrounding the requests in Piedmont's application. The court has wholly failed to apply the principle so aptly stated by Justice Holmes in *Towne* v. *Eisner*, 245 U. S. 418, that, "A word is not a crystal, transparent and unchanged; *it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.*"

Piedmont, in its application, sought authority to engage in scheduled air transportation "on the routes detailed herein, or such modification of such routes as the Board may find public convenience and necessity require", and also sought plenary relief under Section 401. Practically every other application in the proceeding contained, in varying phraseology, clauses of similar import and intendment. Many examples of what had come to be known before the Board as the "catch all" clause may be found in this proceeding. (665-670). Whatever the variations in individual expression, these clauses had come to have a well-defined meaning when used in proceedings before the Board, and this meaning renders resort to dictionaries unnecessary and improper.

The purpose of these clauses was to inform the Board, and any rival applicants, that the applicants making use of the clauses were applicants for any routes which might be awarded in a pending proceeding, whether or not such routes should correspond to the routes proposed by the applicants or any of them.

Before the present case came to hearing the Board had considered such "catch all" clauses and had given clear notice to all concerned that it would construe these clauses liberally in the light of the facts of each case. In the *North Atlantic Routes Case*, 6 C.A.B. 319, the Board had decided that three routes should be established across the continent of Europe. Giving a broad interpretation to the "catch all" clause in various applications, the Board had transposed routes freely in the public interest. American Export, which had specifically applied only for a route across *central* Europe, was awarded a route across *northern* Europe. Pan American, which had specifically applied only for routes across *northern* Europe and across *southern* Europe, was awarded a route across *central* Europe. TWA, which had specifically applied for a route across *central* Europe, was awarded a route across *southern* Europe. The Board went to great lengths in a unanimous opinion on this point to show that the "catch all" clauses of these various carriers in fact contemplated the awards which were made. (6 C.A.B. at 345-350).

The Board has frequently considered such "catch all" clauses, and has given many practical examples as to whether a particular enlargement or change in a specific route pattern would be found as a fact to be within the scope of the clause. Thus in the *Rocky Mountain States Case*, 6 C.A.B. 695, the Board held that the inclusion, in the certificate issued to Summit Airways, of service to Salt Lake City, Utah, as a terminal point, was appropriate although this point did not appear on any of Summit's proposed routes and its inclusion involved as extension from Evanston, Wyoming, the most westerly point specifically proposed by Summit.

So also, in the *North Central Case*, 7 C.A.B. 639, Iowa Airplane Co. applied specifically only for routes emanating out of Des Moines, Iowa to other points which were *within the state of Iowa.* Nevertheless the Board found that service was required on routes extending from Des Moines as far north as Minneapolis/St. Paul, Minnesota, as far north-

west as Huron, South Dakota, and as far west as North Platte, Nebraska. Under all of the circumstances of that case the Board found that Iowa Airplane Co., by virtue of its "catch all" clause, was an applicant for these routes, and the Board certificated the company to serve these routes even though most of the route mileage lay outside the state of Iowa.

On the other hand, the Board held in the *Panagra Terminal Investigation Case*, 4 C.A.B. 670, that an extension of Panagra's routes over some 1,200 miles from the Canal Zone to some terminal point in the United States was too great a change to be deemed a modification of its existing route structure. Similarly, in the *West Coast Case*, 6 C.A.B. 961, it held that the application of Los Angeles Airways, specifically proposing service out of Los Angeles to points no farther north than Bakersfield and Santa Maria, was not broad enough to justify its selection under its "catch all" clause for routes extending hundreds of miles north to Medford, Oregon.

The foregoing examples clearly show that the basic determination is one of *fact*. Whether a particular application with its "catch all" clause is an application for a route found required by the Board, is a question which must be determined by the Board on the basis of all the *facts* of record. That the question is one of fact and not of law is clearly indicated in the case of *W. R. Grace & Co.* v. *Civil Aeronautics Board*, 154 F. (2d) 271. In that case the Circuit Court of Appeals for the Second Circuit held that there was no requirement *of law* that a written application contain a substantially accurate point-by-point description of the routes to be certificated. There the court further held that the written consent of a carrier to serve a route determined to be necessary is the legal equivalent of a full dress application for such route. On rehearing, the Court said:

> "But we adhere to the view that a *consent* by a carrier to a 401 (h) extension proceeding begun by the Board is the *legal equivalent of a petition for the same* extension initiated by the carrier." (154 F. (2d) at 287)

The solution of this question of fact in each case must be based upon factors such as the length of the mileage of the extended service, the amount of additional capital required to operate it, and the operating problems to be encountered. No fixed value can be assigned to any of these factors, and their individual weight and aggregate effect necessarily involve the exercise of expert judgment based on specialized knowledge and experience in a field which Congress has entrusted to the Board. In the exercise of its judgment, the Board expressly found as follows:

> "Piedmont's application, when viewed in the light of all pertinent factors, shows that this carrier was, within the meaning of Section 401 (d), an applicant for the routes awarded it." (616)

This finding cannot be set aside by the Court. The case falls squarely within the rule announced by this Court in the case of *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80:

> "If the action rests upon an administrative determination—an exercise of judgment in an area which Congress has entrusted to the Agency—of course it must not be set aside because the reviewing Court might have made a different determination were it empowered to do so." (318 U. S. at 94)

Upon the foregoing we submit that Piedmont was, beyond any question of doubt, an applicant before the Board for the routes certificated to it. Its status as such was not properly subject to challenge by the Court.

POINT II.

The Board clearly has the power to include in a certificate the obligation to serve points which the applicant did not ask to serve in its written application. It was error for the court below to rule otherwise.

Assuming, without conceding, that Piedmont's application did not request operations to the few points west of the Appalachians which were not included in its route proposals, nevertheless the Board was not thereby precluded from requiring service to these points. The decision below would prevent the Board from requiring such service and would thereby frustrate the fundamental purposes of the Act. For example, the result would be that after an investigation over a period of years had demonstrated a public need for air transportation from Cincinnati, Ohio to Charlottesville, Virginia, along with many other pints, and after one or more applicants had been found fit, willing and able to perform satisfactory service in the area, all applications would have to be rejected and the investigation begun all over again because the applicants who proposed to serve Cincinnati did not propose to serve Charlottesville and those who proposed to serve Charlottesville did not propose to serve Cincinnati.

It was to prevent such a ridiculous result that Congress made express provision in the Act that the Board should not be bound to issue a certificate upon terms in form and substance as proposed by an applicant, but might add thereto such terms and conditions as the public interest might require. Section 401 (f) of the Act provides that:

> ". . . there shall be attached to the exercise of the privileges granted by the certificate . . . such reasonable terms, conditions and limitations as the public interest may require."

What could be more reasonable in the public interest than to condition the privilege of operations to points requested upon the assumption of the obligation to extend the service

to other points in the same area which the Board finds to need the service, and which the Board finds the applicant fit and able to serve?

Any doubt which might otherwise exist that the Board has this power has been laid to rest by the decision of this Court in the case of *Chicago, St. Paul, Minneapolis and Omaha Ry. Co.* v. *United States,* 322 U. S. 1.

That case arose under Part II of the Interstate Commerce Act, known as the Motor Carrier Act, particularly under Sections 207 (a) and 208 (a) thereof. Section 207 (a), like Section 401 (d) of the Civil Aeronautics Act, empowered the Commission to issue a certificate, "authorizing the whole or any part of the operations covered by the applications." Section 208 (a), like Section 401 (f) of the Civil Aeronautics Act, provides that there shall "be attached to the certificate such reasonable terms, conditions and limitations as the public convenience and necessity may from time to time require . . ."

In that case the motor carrier applicant had actually stated its unwillingness to serve numerous points, and had no "catch all" clause in its application. Yet the Commission issued a certificate authorizing service to the points in question, and the applicant accepted the certificate.

On review this Court said:

> "The question of law in the case is whether the Commission on its finding need for such service had power to authorize service of intermediate points *not asked for by the applicant.* The applicant has accepted and is defending the grant, but the competing rail carriers complain of it." (322 U. S. at 3)

This Court then held that under the authority conferred by Section 208 (a):

> "It is clear that the Commission on the facts found had power to include in the authorization *provision for service greater than the carrier had asked.*" (322 U. S. at 4)

The Court of Appeals, in its opinion below, failed to mention said Section 401 (f) or said decision of this Court. On the contrary, it said that this question of the Board's power under the circumstances was "a question not hitherto posed before any other court so far as we are aware." (682). The court's failure to consider the applicable section of the statute and the applicable decision of this Court permitted it to fall into the error which it has committed.

POINT III.

The Court of Appeals has erroneously substituted its own judgment for the judgment of the Board by finding that Piedmont is not fit, willing and able to perform the transportation certificated. The finding of the Board stood unchallenged before the Board, and therefore is not subject to review. Furthermore, this is a matter peculiarly within the specialized field entrusted to the Board and the judgment of the Board thereon is conclusive.

The court below reviewed the Board's finding of Piedmont's fitness, willingness and ability, and ruled that this finding was arbitrary, capricious and without any evidence to support it. (684). This is perhaps the most glaring error committed by the court. For the court to set itself up as having ability superior to that of the Board as to what attributes, characteristics and special skills shall constitute evidence of an applicant's fitness and ability to operate an air transportation system over a given route, is to negative the whole purpose of Congress to entrust this field to the specialized experience and expert knowledge of the Board.

In the first place, it is to be observed that the court based its conclusion upon a most limited and restricted view of the evidence and a positive non-legal standard adopted by itself as to what evidence the Board may consider on the point. There has never been any question but that there was adequate evidence to establish Piedmont's fitness, willingness and ability to conduct operations serving all of the certificated points in Virginia and North Carolina, where

the major portions of the routes are located. *In fact, it was conceded by counsel for State that Piedmont's qualifications had been amply shown for all the routes awarded.* When asked by the Chairman of the Board the specific question whether State was taking the position that Piedmont was not capable of operating the routes to be certificated, counsel stated:

> "We are taking the position that *both State and Piedmont are fit and able;* it's a question of which has demonstrated in this record to be *more* fit, willing and able." (607)

The real basis of the court's holding is not that there was a total absence from the record of Piedmont's fitness, willingness and ability, but that, because Piedmont had not specifically asked in its application to serve Louisville and the other points west of the Appalachians, the Board could not properly consider *any* evidence offered by Piedmont of its fitness, willingness and ability in a case where service to those points was to be included in the certification. This is made perfectly plain by the statement at page 20 in State's reply brief below with reference to its counsel's admission of Piedmont's qualifications:

> ". . . it is plain that counsel was endeavoring to make the point that an abstract finding of fitness, willingness and ability could be of no avail to Piedmont *as Piedmont had not applied for the routes in question.* Counsel continued the line of thought with the suggestion that if the Board 'selected American Air Lines for a route that they didn't apply for and didn't put in any evidence for and weren't an applicant, I would say that that didn't belong to them no matter how able they were.' "

It is also made clear by the fact that the Court, in its opinion, did not find absence of evidence of fitness and ability of Piedmont generally, but only with respect to the points "west of the Appalachians and over mountainous terrain." (684).

This finding by the court is all the more remarkable because there is not a scintilla of evidence in the record that operations extending to Cincinnati and Louisville required any other, different or additional qualifications by the operator than were required for operations to Roanoke, Virginia; Princeton, Bluefield, Beckley and Charleston, West Virginia; Asheville, North Carolina; and Bristol and Knoxville, Tennessee; service to all of which was specifically proposed by Piedmont. A glance at any appropriate topographical map demonstrates that service to all of these latter points involves operations over "mountainous terrain," such as that which the court, without any foundation in the evidence, seemed to regard as a formidable hurdle for air transportation to surmount. Where has the court acquired the expert knowledge to enable it to judge whether or not the technical ability to cope with elevations of four to five thousand feet is insufficient to cope with elevations a thousand or so feet higher? The court was obviously transcending its proper sphere of authority when it assumed to characterize as absurd the position taken by the Board's counsel that the same fitness and ability which would qualify an applicant to operate from Hagerstown to Norfolk would also qualify it to operate from Jacksonville to Miami. (685).

Instead of pointing out wherein it considered Piedmont's evidence of fitness, willingness and ability insufficient to show its ability to operate the routes certificated, the court below concentrated on a single statement of Piedmont's counsel. (684) This statement pointed out that *one* of Piedmont's routes followed the Shenandoah Valley and crossed the Blue Ridge Mountains only at a point where they were very low. The court below would have us believe that this was a fair characterization of *all* of the operations concerning which Piedmont offered any evidence of its fitness and ability. Reference to the record where this statement is set forth (553) makes it clear that this remark of counsel was directed only to a *single* route proposed by Piedmont, that from Columbia, South Carolina to Washington, and was not intended to be offered as a description

of Piedmont's entire proposed route system. The remark was introduced by the statement at the top of the cited page:

> "I would like to discuss first the proposed route from Columbia, South Carolina to Winston-Salem, and from Winston-Salem to Washington." (553)

The court below overlooked and failed to notice the following pertinent items of evidence put into the record by Piedmont which were most certainly considered by the Board to be relevant to Piedmont's fitness and ability to conduct operations to points west of the Appalachians and over mountainous terrain:

(1) As shown by flight logs of only four of its pilots, Piedmont had conducted at least 28 actual flights from Winston-Salem, N. C., to points west of the Appalachians, to wit, Cincinnati, Ohio; Huntington-Ashland, Charleston and Beckley, West Virginia; and Middlesboro-Harlan, Kentucky. (292)

(2) In addition to the flights just mentioned, the same pilots had flown at least 93 actual flights from Winston-Salem to points such as Bristol, Asheville, Knoxville and Roanoke, all of which involved operations over mountainous terrain. (292)

(3) Furthermore, Piedmont had conducted very extensive charter flights from its base at Winston Salem (289, 466); and Cincinnati and Chicago were among the most frequent destinations (445).

The court's assertion that the record is barren of any evidence of Piedmont's fitness, willingness and ability to operate the routes certificated is nothing more than a continuation of its original erroneous conclusion that Piedmont was not an applicant for these routes and affords no justification for setting aside the Board's finding to the contrary.

POINT IV.

Should this Court fail to reverse the order of the Court of Appeals in its entirety, said order should at least be modified to the extent that it shall provide, instead of invalidating Piedmont's certificate in its entirety, that there be continued in effect that portion of the routes as to which Piedmont unquestionably applied and proved its fitness, willingness and ability.

It will be observed that Piedmont, in its original application, specifically proposed service to every point named in the certificate except Louisville, Lexington-Frankfort, Middlesboro-Harlan and the seasonal stop at Morehead City. Even if the scope of Piedmont's application should be restricted by its amendment to the eastern portion of the routes (as the court below has found), nevertheless Piedmont specifically applied to serve Charleston, W. Va., Bristol, Va.-Tenn., Asheville, N. C., and all points on the certificated routes lying easterly thereof. Route 3 of the three routes awarded to Piedmont, the route from Roanoke to Wilmington, N. C., was entirely within the admitted scope of the application and the proof. The elimination of the six cities west of the above-named points from routes 1 and 2 (less than one-quarter of the total number certificated) would leave the award of the remainder of these routes entirely within the admitted authority of the Board.

Such a modification of the decree below would be manifestly in the public interest. It would mean the 28 cities presently certificated would not be deprived, during a reinvestigation by the Board, of an existing efficient public service which all parties agree that they need. If a portion of Piedmont's certificate were left in effect, the Board could, under Section 416 (b) (1) of the Act, provide by an exemption order for the continuation of service to the other cities involved while it re-examined in accordance with the principles announced by the Court the question whether Piedmont, State, or some other applicant should operate all or any part of the presently certificated routes. Under the order of the court below, the existing service would appar-

ently be destroyed since there is no provision in the Act by which Piedmont, without some existing effective certificate, could receive the mail pay upon which its economic existence as a carrier is dependent. Such a modification of the order below could not injure State since in no event could State secure a certificate until further proceedings could be conducted by the Board.

Modification of the order below as here proposed is required by the principles announced by this Court to govern the conduct of the courts in their function of reviewing administrative orders. In *Addison* v. *Holly Hill Fruit Products*, 322 U. S. 607, where the Administrator had made a determination found invalid by the Court, this Court said:

> "But that leaves the difficult problem of the proper disposition of the case. *It is our view that the case should be remanded to the district court with instructions to hold it until the Administrator, by making a valid determination of the area with all deliberate speed, acts within the authority given him by Congress.*
>
> "Such an adaptation of court procedure to a remodeling of the situation as nearly as may be to what it should have been initially is not unprecedented. Such was essentially the procedure which was devised to unravel the skein in United States v. Morgan, 307 U. S. 183, 83 L. Ed. 1211, 59 S. Ct. 795. The Court did not feel itself balked by the kind of considerations that seemed controlling to a Baron Parke. The creative analogies of the law were drawn upon by which great equity judges, exercising imaginative resourcefulness, have always escaped the imprisonment of reason and fairness within mechanical concepts of the common law." (322 U. S. at 618, 620)

In that case the Court re-emphasized the principle previously stated in the *Morgan* case as follows:

> ". . . in construing a statute setting up an administrative agency and providing for judicial review of its action, court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated ob-

jects of the statute. Court and agency are the means adopted to attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through co-ordinated action. Neither body should repeat in this day the mistake made by the courts of law when equity was struggling for recognition as an ameliorating system of justice; neither can rightly be regarded by the other as an alien intruder, to be tolerated if must be, but never to be encouraged or aided by the other in the attainment of the common aim." (322 U. S. at 621)

We submit that such a modification as we propose is clearly indicated by these principles. The decree below, without modification, plainly violates these principles to the great detriment of the public interest.

CONCLUSION.

The Court of Appeals, in its decision below, clearly overstepped the bounds of permissible judicial review. It committed serious error at the outset when it substituted its own finding of fact for that of the Board as to the scope of Piedmont's application. It then intensified the error by completely ignoring a decision of this Court which should have demonstrated to it that the Board had full power to issue the certificate to Piedmont. Further, the court below committed glaring error when it overruled the Board's expert judgment of Piedmont's fitness, willingness and ability. Following all this, the court entered a decree which is unreasonable even in the light of its own rulings.

This tragedy of errors clearly calls for this Court to grant Piedmont's petition for a writ of certiorari.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1949

No. 159

PIEDMONT AVIATION, INC., *Petitioner,*

against

STATE AIRLINES, INC., *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF FOR THE PETITIONER, PIEDMONT AVIATION, INC.

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IN THE

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OCTOBER TERM 1949

No. 159

PIEDMONT AVIATION, INC., *Petitioner*,

against

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On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF FOR THE PETITIONER, PIEDMONT AVIATION, INC.

Opinions Below.

The opinion of the Court of Appeals is reported in 174 F. (2d) 510. It also appears at pp. 675-686 of the printed Record before this Court. The supplemental opinion of the Civil Aeronautics Board is reported in 8 C.A.B. 716 (adv. sheets), and appears at pp. 610-628 of the printed Record before this Court. The original opinion of the Civil Aero-

nautics Board is reported in 7 C.A.B. 863, and appears at p. 565 of the printed Record.

Jurisdiction.

This Court has jurisdiction to review the judgment and decree of the United States Court of Appeals by virtue of the following statutory provisions: 28 U.S.C. § 1254 (see Pub. L. 773, 80th Cong., 2nd Sess. ch. 646), and § 1006 (f) of the Civil Aeronautics Act of 1938 (52 Stat. 1024; 49 U.S.C. § 646 (f)).

Petition for a writ of certiorari was filed on July 2, 1949, and was granted by this Court on October 10, 1949.

Statement of The Case.

Petitioner, **Piedmont Aviation, Inc.**, is an air carrier engaged in transporting persons, property and mail by aircraft in the United States. It operates pursuant to a certificate of public convenience and necessity which was issued to it by the Civil Aeronautics Board on December 12, 1947 under the Civil Aeronautics Act of 1938, as amended (52 Stat. 977 ff., 49 U. S. C. §§ 401-680). State Airlines, Inc., the Respondent here, was an unsuccessful applicant before the Civil Aeronautics Board for the certificate which was issued to the Petitioner.[1]

Section 401(a) of the Act provides that no air carrier shall engage in any air transportation without holding a

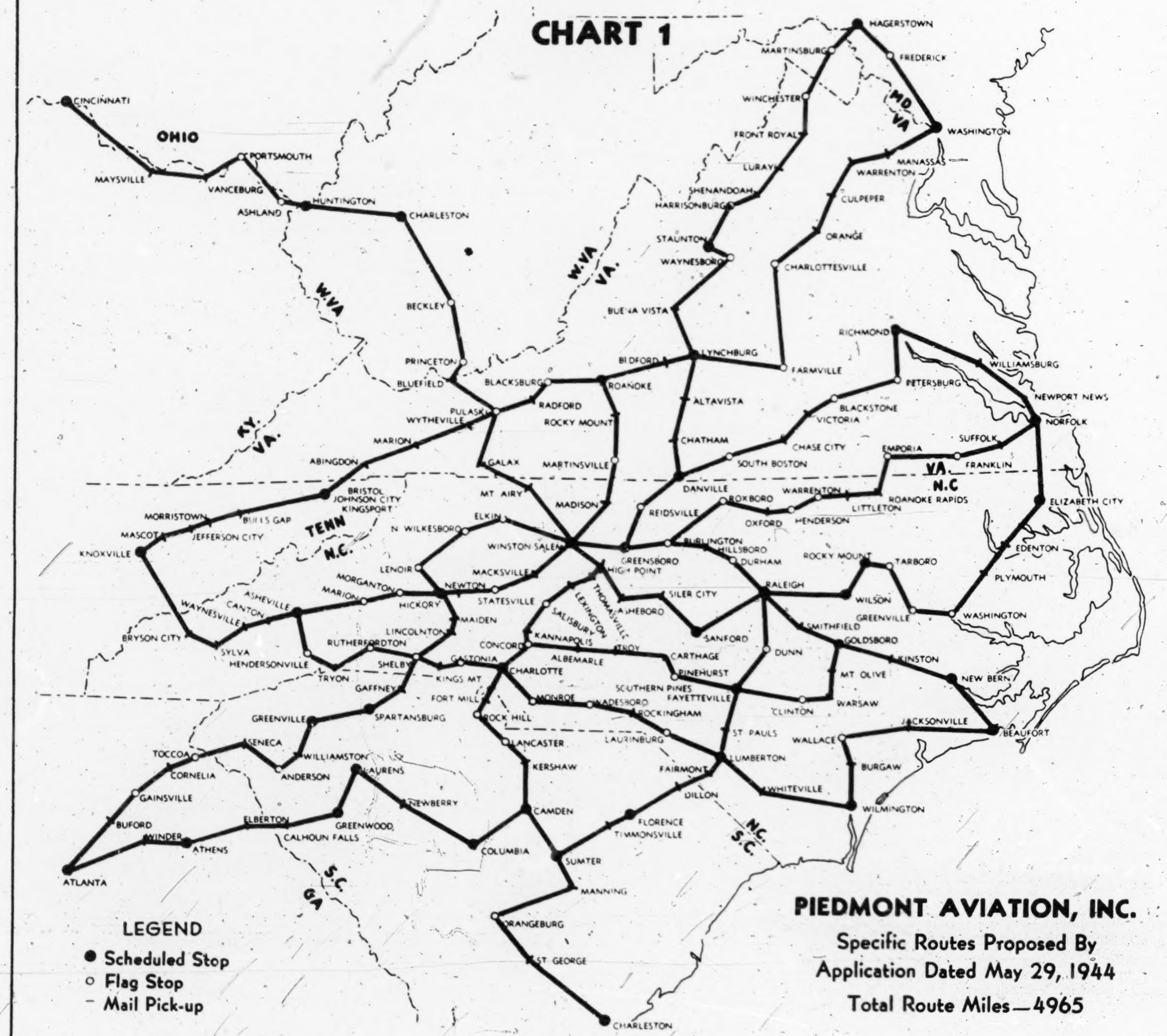
[1] In the court below, State was the petitioner seeking review of the Board's order issuing the certificate, the Board was the respondent, and Piedmont, Your Petitioner, was an intervenor. Each of the three parties filed a petition for a writ of certiorari, and all petitions were granted (Nos. 157, 158 and 159).

In this brief the Civil Aeronautics Board and its predecessor, the Civil Aeronautics Authority, will be called the "Board". The Civil Aeronautics Act of 1938 (Act of June 23, 1938, c. 601, 52 Stat. 977 ff., 49 U. S. C. § 401-680) will be called the "Act". Petitioner will be called "Piedmont", and State Airlines, Inc., will be called "State".

All italics are ours unless otherwise specified.

Numerical references in parentheses refer to pages of the printed Record filed with this Court.

CHART 1



LEGEND

- ● Scheduled Stop
- ○ Flag Stop
- – Mail Pick-up

PIEDMONT AVIATION, INC.

Specific Routes Proposed By
Application Dated May 29, 1944
Total Route Miles—4965

certificate issued by the Board and authorizing such transportation. Sections 401(b) and (c) provide for the filing of applications for certificates in such form and containing such information as the Board may require, for the giving of public notice of such applications, and for the holding of hearings thereon. Section 401(d) empowers the Board to issue a certificate authorizing "the whole or any part of the transportation covered by the application" if it finds: (1) "that the applicant is fit, willing and able to perform such transportation properly", and (2) "that such transportation is required by the public convenience and necessity."

Pursuant to section 401(b) of the Act, Piedmont filed an application with the Board on May 29, 1944. (28-61.) This application requested that Piedmont be awarded a certificate authorizing the transportation of passengers, property and mail on the numerous specific routes shown in color on Chart 1, which is inserted opposite this page. Study of Chart 1 will reveal that these routes form a comprehensive network in the broad area bounded by Washington, D. C., Norfolk, Wilmington, N. C., Charleston, S. C., Atlanta, Knoxville and Cincinnati. The routes have a total length of 4,965 miles. (43.)

In addition to requesting the specific routes shown on Chart 1, Piedmont's application also requested "such modification of such routes as the Board may find public convenience and necessity require" and "such other and further relief, general and specific, under section 401 [of the Act] as the Board may deem appropriate." (31, 41.)

By February 24, 1945, numerous other corporations had also filed applications for certificates authorizing air transportation in the southeastern part of the United States. On that date the Board entered an order which "consolidated into one proceeding" the application of Piedmont described above, certain applications which had been filed by State, and numerous applications by other parties. This proceeding was designated the Southeastern States Case. (27.)

Thereafter, about March 8, 1945, Piedmont filed an amendment to its application. (62-71). Under the amendment Piedmont specifically applied for a certificate authorizing the transportation of passengers, property and mail on certain routes and the transportation of property and mail on other routes. These routes are set forth on Chart 2 on the opposite page. Chart 2 shows that here again Piedmont specifically applied for a comprehensive network of air routes.[2] The routes total 5,763 miles in length, and cover a broad area bounded by Washington, Norfolk, Wilmington, N. C., Charleston, S. C., Atlanta, Knoxville, and Charleston, W. Va. (653, 652).

Piedmont's application as amended also contained a request for authority to carry "*passengers*" as well as mail and property "on the routes described herein," referring to *all* the routes described in the application. (41, 63.)

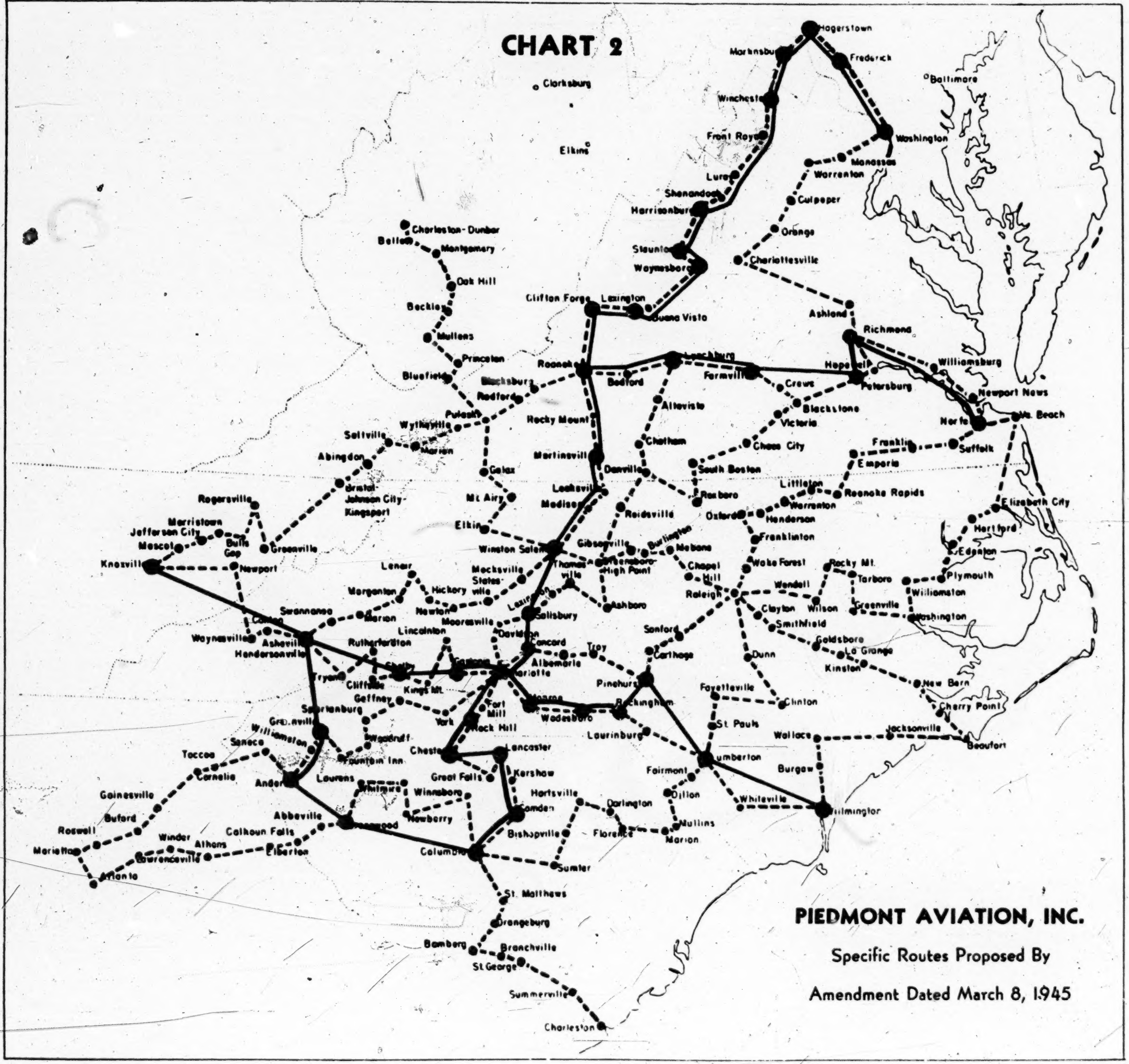
Furthermore, Piedmont's application as amended requested "such modification of such routes [referring again to all the routes specified in the application] as the Board may find public convenience and necessity require," and such "further relief, general and specific, under section 401 as the Board may deem appropriate." (63, 41.)

A hearing was held before Examiners of the Board in June 1945, and Piedmont, State and 23 other applicants presented evidence in support of their applications. After the hearing briefs were filed with the Examiners. Piedmont, in its brief to the Examiners, reiterated its desire to carry *passengers* on *all* the routes for which it had applied if the Board should find such service required. (489.) Also, Piedmont contended that the applications of State should be denied in their entirety. (498, 499, 501.)

---

[2] The Court of Appeals in its opinion below printed a map which purports to show the routes for which Piedmont specifically applied (676, top map). *However, that map is erroneous because it failed to print most of the routes for which Piedmont did specifically apply. The true picture is set forth in Charts 1 and 2 in this brief.* The court below of necessity conceded that its map did "not purport to show all of the points and routes applied for . . . by Piedmont" (679).

CHART 2



PIEDMONT AVIATION, INC.

Specific Routes Proposed By

Amendment Dated March 8, 1945

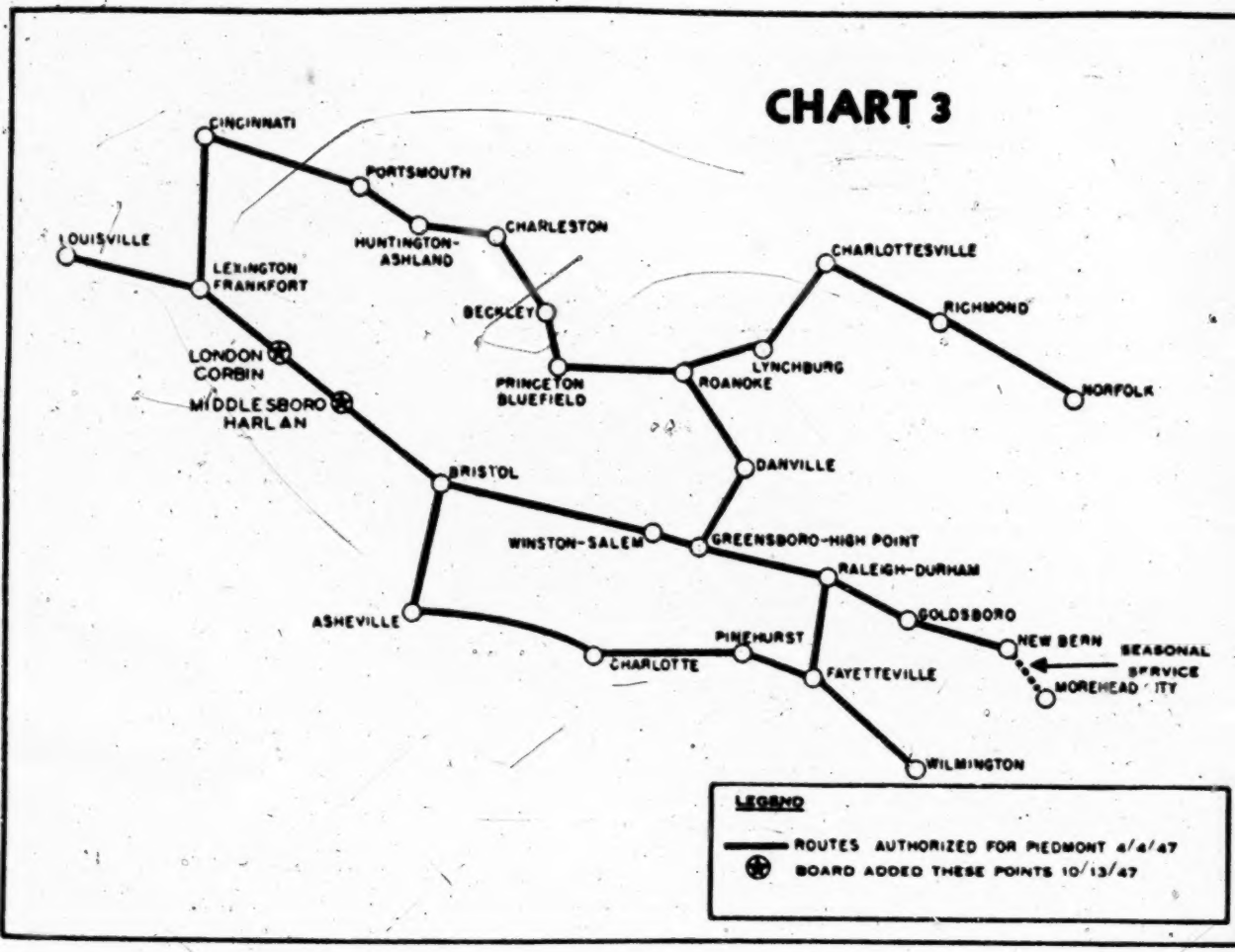


CHART 3
CINCINNATI
PORTSMOUTH
LOUISVILLE
HUNTINGTON-
ASHLAND
CHARLESTON
LEXINGTON
FRANKFORT
CHARLOTTESVILLE
BECKLEY
RICHMOND
LONDON
CORBIN
LYNCHBURG
PRINCETON
BLUEFIELD
ROANOKE
NORFOLK
MIDDLESBORO
HARLAN
DANVILLE
BRISTOL
WINSTON-SALEM
GREENSBORO-HIGH POINT
RALEIGH-DURHAM
GOLDSBORO
ASHEVILLE
PINEHURST
NEW BERN
SEASONAL
SERVICE
CHARLOTTE
FAYETTEVILLE
MOREHEAD CITY
WILMINGTON
LEGEND
ROUTES AUTHORIZED FOR PIEDMONT 4/4/47
BOARD ADDED THESE POINTS 10/13/47

Thereafter the Examiners of the Board issued their Report and recommended, among other things, that Piedmont be certificated to carry passengers, property and mail on part of the route system which was eventually certificated by the Board (520). Piedmont and the other applicants then filed exceptions and briefs to the Board, and participated in the oral argument before the Board. At this stage, as earlier, Piedmont urged that all its specifically described routes should be certificated, and also expressed its willingness to serve other points under the "catch all" clause in its application. (554.)

Piedmont had clearly recognized State as a competitor for the routes involved, and, on brief and argument before the Board, made extended reference to this competition and to State's lack of experience and proper qualifications. (539-548, 551-556.) If State did not realize previously (as it should have) that Piedmont and State were competitors for the same routes, then surely it did so when counsel for Piedmont preceded counsel for State at the argument and made numerous pointed comparisons which were very detrimental to State. (555.) State's argument neither contradicted these comparisons nor complained as to the notice given it.

After hearing the argument and considering the evidence, the Board issued its original opinion on April 4, 1947. (565; 7 C.A.B. 863-941.) In its opinion the Board found that the public convenience and necessity require the transportation of passengers, property and mail on the routes shown on Chart 3, which is inserted opposite this page. (565, at 892-896.) A study of this Chart will show clearly that the routes selected by the Board are covered by Piedmont's application. Whereas Piedmont had applied for specific routes extending for many thousands of miles (and for modification of those routes as the Board might see fit), the Board found service required on only 1,700 route miles. The routes selected by the Board cover a smaller area than that which Piedmont proposed to serve, and they conform to a substantial degree with the routes specifically proposed by Piedmont.

In its opinion of April 4, 1947, the Board made the following additional findings:

1. Piedmont was an applicant to perform the transportation which the Board had thus found to be required. (565, at 898, 901).

2. Three of the applicants (Gillespie, Blue Grass and Commonwealth) "met the test of fitness, willingness and ability," but the business interests of those companies were centered in Tennessee, Kentucky and Ohio, and the public interest would be better served by awarding a certificate to some one of the other applicants "whose activities are conducted in, and who have close ties with, the area [North Carolina and Virginia] embracing a major portion of the local system herein prescribed." (565, at 899.)

3. Piedmont was fit, willing and able to perform the transportation found required, and was better qualified than State (or any other applicant) to perform such transportation. (565, at 899-902.)

With respect to the selection of Piedmont rather than State, the Board made an extensive review of the qualifications of the two applicants, and concluded as follows:

> "Thus, while State's plans are built substantially around one man—its president, Mr. Gilbert—Piedmont's wartime experience and extensive charter operations have enabled it to obtain a well-rounded organization with key personnel who are thoroughly familiar with the operating conditions of the area involved." (565, at 901, 902)

After the issuance of this original opinion, State petitioned the Board for reconsideration insofar as the Board had awarded the route system in question to Piedmont rather than to State. (566.) As requested by this petition, the Board reopened the case and heard argument on the points raised by State. (573.) *On December 12, 1947, the*

Board issued a supplemental opinion and unanimously reaffirmed its award to Piedmont. (610-620.) This supplemental opinion expressly reaffirmed the findings made in the original opinion, including the finding that Piedmont was in fact an applicant for the routes awarded. (616.)

On the same day, December 12, 1947, the Board issued the certificate of public convenience and necessity to Piedmont. Under the terms of the certificate and of the Act Piedmont commenced airline operations within a short period of time, and is continuing to render service on the routes awarded it.

A petition for review was filed by State with the United States Court of Appeals for the District of Columbia Circuit, and Piedmont intervened. On April 6, 1949, that court rendered a decision which would reverse the order of the Board on the following grounds:

1. Piedmont was not an applicant to perform the transportation authorized by the certificate. (681.)

2. The Board was without the power to issue a certificate to any applicant which did not specifically describe in its application, with no more than "slight deviations", the exact route system which the Board might find to be required. (681-683.)

3. The Board lacked the power to issue the certificate to Piedmont.

4. Piedmont was not fit, willing, and able to render the transportation which was authorized. (683-685.)

5. The orders and findings of the Board were "arbitrary and capricious and lacked the support of substantial evidence." (686.)

The court below held that it had no authority to direct the Board to issue a certificate to State, but it did order the case remanded to the Board for further proceedings "not inconsistent" with the rulings stated above. (686, 687.)

Piedmont and the Board both filed with this Court petitions for writs of certiorari, asking this Court to reverse the court below insofar as it had overruled the decision of the Board (Nos. 159 and 157). State, too, filed a petition for a writ of certiorari, asking this Court to order the Board to issue a certificate to State (No. 158). This Court has issued writs of certiorari in all three cases. Accordingly, the present brief will be addressed to the points raised by all parties.

Specification of Errors.

1. The Court of Appeals erred when it set aside the Board's finding of fact that Piedmont was an applicant for the routes awarded.

2. The Court of Appeals erred when it held that the Board lacked power to include in a certificate points and routes not applied for by the recipient of the certificate.

3. The Court of Appeals erred when it held that the Board lacked power to issue the certificate in question to Piedmont.

4. The Court of Appeals erred when it set aside the Board's finding of fact that Piedmont was fit, willing and able to perform the transportation authorized.

5. The Court of Appeals erred when it ruled that the findings of the Board were "arbitrary and capricious and lacked the support of substantial evidence."

6. The Court of Appeals erred when it reversed the decision of the Board.

Summary of Argument.

The Board has been endowed by Congress with unusually broad powers to establish the route pattern, and to control the development, of an air transportation system which now blankets the nation and also encircles the globe. A narrow circumscription of these powers, in the manner of

the court below, contravenes the clear Congressional intent in delegating the powers, and furthermore, denies to the Board the reasonable freedom of action which any administrative agency must have.

It is the Board, not the court, which has the expert judgment necessary to give proper weight to all the facts of record and to make ultimate findings of fact. This well-established principle is particularly applicable in a case such as this, where the Board had before it a factual record covering thousands of pages and involving the air service needs of a large area of this country. In the exercise of its expert judgment the Board has considered the multitudinous facts in this record and has found that Piedmont was in fact an applicant for the routes awarded it. The Court below improperly usurped the function of the Board when it set aside this finding of fact.

The Act provides that an application for a certificate shall be in such form and shall contain such information as the Board shall require; and it further provides that the Board's findings of fact shall be conclusive, if supported by substantial evidence. Here the Board found that Piedmont's application met the requirements of the Board and that Piedmont was in fact an applicant for the routes certificated. Since there was ample and very substantial evidence to support this finding of fact, the court below acted improperly when it substituted its own finding for the finding of the Board. Piedmont applied for specific routes serving nearly all the cities finally certificated and also conforming to a substantial degree to the very routes which were ultimately awarded. Furthermore, Piedmont's application (like those of other applicants) contained a "catch all" clause and a request for relief under Section 401 of the Act, the clear effect of which was to make Piedmont an applicant for any routes in the area which the Board might find required. Hence the Board's finding of fact was entirely proper and must be sustained.

Even if it be assumed *arguendo* that Piedmont was not in fact an applicant for certain portions of the route system

awarded it, the Board nevertheless had full power to award the certificate in question to Piedmont. The decision of this Court in *Chicago, St. Paul, Minneapolis and Omaha Ry. Co.* v. *United States*, 322 U. S. 1, clearly establishes the power of the Interstate Commerce Commission to award a certificate under similar circumstances, and should be controlling here. Section 401(f) of the Act empowers the Board to include in a certificate "such reasonable terms, conditions and limitations as the public interest may require." Construed in such a manner as to serve the public interest, this power surely means that the Board, when certificating an applicant for services applied for, may add "terms" and "conditions" requiring other service for which no application was made but which the Board has found required. The court below wholly ignored the controlling effect of the decision of this Court and of Section 401(f).

Furthermore, the court below erroneously set aside the Board's finding that Piedmont was fit, willing and able to operate the routes awarded it. The Board's finding of fact was supported by substantial evidence, indeed by overwhelming evidence, of Piedmont's fitness, willingness and ability to serve the very routes for which it was certificated. The finding was set aside by the court below on the untenable ground that none of Piedmont's evidence on this point could be considered by the Board as to Piedmont's fitness, willingness and ability to serve points for which Piedmont did not specifically apply. This was a matter to be decided by the expert judgment of the Board, not by the legalistic hypotheses of a reviewing court.

For all the foregoing reasons this Court should reverse the decision below, and should affirm the Board's award to Piedmont. If the Court should nevertheless fail to affirm the award to Piedmont, it should *not* direct the Board to issue a certificate to State (as here urged by State). Under the holding of this Court in *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, the Board would have continuing discretion to reconsider the case as the public interest might require.

POINT I.

Piedmont was an applicant for the routes awarded to it. The Board's finding to this effect was a finding of fact which the Court is without power to set aside.

The Board, in its supplemental opinion, summarized the facts of the case and then specifically stated:

> "Piedmont's application, when viewed in the light of all pertinent factors, shows that that carrier was, within the meaning of section 401(d) [of the Act], an applicant for the routes awarded it." (616.)
>
> "We conclude that Piedmont's request was sufficiently broad in scope to embrace the route awarded it." (615.)

This finding can not be set aside by the Court. It was a finding of fact made in the expert judgment of the Board, and was amply supported by substantial evidence. Section 1006(e) of the Act provides that on appeal to the courts:

> "The findings of fact by Board, if supported by substantial evidence, shall be conclusive."

The court below paid only lip service to the sound doctrine that courts shall be bound by administrative findings of fact which are supported by substantial evidence. The court below conceded that the issue as to whether Piedmont was an applicant for the routes awarded, was "a fundamental question of fact." (681.) Nonetheless, that court undertook its own brief analysis of certain *selected* facts, and in effect substituted its own finding for the finding of the Board. The court below was clearly in error, therefore, when it set aside the Board's positive finding that Piedmont was an applicant for the routes awarded.

The Board's finding was amply supported by the evidence in the case. A comparison of Charts 1 and 3, inserted above, demonstrates clearly that Piedmont's original application specifically proposed service to all of the points included in the certificate except the few on the Y-shaped

extension resulting from the inclusion of service to Louisville. Chart 2, inserted above, shows that *Piedmont's application as amended also specifically proposed service to nearly all the cities certificated, and it specifically proposed service along a very substantial portion of the routes certificated.*

The map which the court below included in its opinion (676, top map) does not correctly reflect the routes for which Piedmont specifically applied. The court below admittedly set forth in that map only a *part* of the routes and services specifically sought by Piedmont. (679.) Although the court stated that its map showed all the routes specifically proposed by Piedmont for the carriage of *passengers* (679), such is not the case.

Piedmont's application, both in its original form and in its amended form, specifically applied for many more routes than are shown in the map of the court below. The true picture is set forth in Charts 1 and 2, which are inserted above. Furthermore, Piedmont's application, in its original form and as amended, contained a request to carry "*passengers, mail and property on the routes described herein,*" *referring to all the routes described in the application.* (41, 63.) Thus, Piedmont applied generally for the right to carry *passengers*, as well as property and mail, on all the routes shown in Charts 1 and 2. The court below, in drawing its map, used Chart 2 as a basis but eliminated from that Chart many routes which the court said were proposed only for the carriage of property and mail. In doing so, the court below erroneously ignored Piedmont's clear request to carry *passengers* on all the routes shown.

Piedmont's specific application, without more, furnished a substantial basis upon which the Board could properly find (as it did) that Piedmont was in fact an applicant for the routes awarded. The routes and services *specifically* proposed conform to a substantial degree to the routes awarded. The application as amended specifically sought *5,763* route miles in a broad area bounded by Washington, Norfolk, Charleston, S. C., Atlanta, Knoxville, and Charles-

ton, W. Va. (See Chart 2, above.) In contrast, the Board awarded Piedmont only *1,700* route miles in a smaller area.

In addition to these specific requests for a comprehensive route system in the area, Piedmont's application contained a broad "catch all" clause. This "catch all" clause was set forth in Piedmont's original application and was restated in its amendment as follows:

> "The applicant, Piedmont Aviation, Inc., * * * hereby applies for a permanent and/or temporary certificate of public convenience and necessity * * * for the authorization to engage in scheduled air transportation * * * on the routes detailed herein, *or such modification of such routes as the Board may find public convenience and necessity require.*" (63)

Under all of the circumstances of the proceeding before the Board, this "catch all" clause amplified Piedmont's specific requests so that the Board clearly had an adequate basis for finding Piedmont to be an applicant for the routes awarded. The court below committed fundamental error when it held that under such a clause the Board could certificate no more than "slight deviations" from the routes specifically applied for. (681.) Here again the court singled out one part to the exclusion of the meaning of the whole. In this instance the court below selected the word "modification" which is contained in Piedmont's "catch all" clause. In construing this one word, the court had brief resort to one dictionary definition, one court decision which is not in point, and one item of evidence which is not relevant. The court then said that "no reasonable mind could conclude that the routes awarded to Piedmont were merely a modification of the routes proposed by it." (680, 681.)

Had the court below made a proper study of the dictionary, of judicial decisions construing the word "modification," and of the record in this case, it would have seen that the word "modification" signifies *a change of a substantial nature, including a substantial increase in size.* The

word has no such narrow meaning as the court below attempted to ascribe to it. Most important, Piedmont's entire "catch all" clause, including the word "modification", had a well-recognized meaning in the present proceeding. This clause, like the similar clauses used by the other applicants, stated to the Board and to all concerned that the applicant wished to be considered a candidate for any route in the area which the Board might find required. The court below erroneously ignored all these controlling matters.

The court below had resort to one brief dictionary definition of the word "modification". (680.) The court conceded that "'modification' ordinarily connotes change or altering," but then ruled that "such change or altering must not be great" and can include only "*slight deviations*" (680, 681). In holding that the "change or altering must not be great" and that in fact the change must be insignificant, the court below was clearly in error. Dictionary definitions of "modification" recognize in that word a much broader significance than was recognized by the court below. Other courts, too, have held that the word means change, and change of a substantial nature. Most important, the word "modification" as used in Piedmont's "catch all clause" had a particular meaning which was well known to all who participated in the Board proceeding, a meaning which signified *any change which the Board might find appropriate.*

Contrary to the decision of the court below, the dictionaries themselves recognize that "modification" has a broad meaning which includes *change of a substantial nature.* For example, Webster's New International Dictionary (2d ed. unabridged, 1947) first defines "modification" in terms of the verb "modify", and then states that the latter word means, among things:

> "4. *To change somewhat* the form or qualities of; to alter somewhat;

That Dictionary defines "to change" as meaning:

> *"To alter by substituting something else for, or by giving up for something else;* to put or take another or others in place of; to make substitution of, for, or among . . ."
>
> *"To render something essentially different from what it was, even to loss of identity, or the substitution of one thing for another".*

Hence "change" imports a *complete departure from existing substance.* "To modify," as stated above, means to change "somewhat." The same Dictionary defines "somewhat" as meaning "in some degree or measure," "some" being further defined as an "unspecified but *appreciable or not inconsiderable quantity, amount, extent, degree, etc.; more than a little, far from negligible.*"

Therefore, on the basis of dictionary definitions alone, Piedmont's request for "modification" of specified routes was a request for "something essentially different" from those routes, "even to loss of identity," and this to an "appreciable, far from negligible, degree." Hence, the court below committed grievous error when its brief excursion into semantics led it to believe that "modification" means a change which "must not be great" and which must in fact be insignificant. To give the word this highly restricted meaning is to strip it of its real import. Consider two simple examples. Since time immemorial adverbs have been said to "modify" verbs. The word "not" is an adverb which "modifies" a verb so effectively that it completely reverses the meaning of any verb with which it is used. Adjectives are said to "modify" nouns. The adjective "infinite" may be used to "modify" the noun "interest," thereby giving that noun a connotation entirely different from what it would have if it were "modified" by "infinitesimal" instead.

Given its proper import as set forth in the dictionaries alone, the word "modification," used in the "catch-all" clause in Piedmont's application, served notice on all con-

cerned that Piedmont was requesting any substantial changes in the specified routes which the Board might find required. Thus, even in the stratified atmosphere of the dictionary, Piedmont's application was clearly sufficient to form the basis for the Board's finding that Piedmont was in fact an applicant for the routes awarded.

Many courts, unlike the court below, have held that "modification" and "modify" import change of a substantial nature, and encompass *a change which results in a substantial increase in size and extent.*

Courts, and administrative bodies too, frequently have statutory power to "modify" decrees and orders which are before them for review. In such situations the courts have held that the power to "modify" includes the power to make substantial changes and *to increase greatly* the relief previously awarded. For example, in *Jarman* v. *Collins-Hill Lumber & Coal Co.*, 226 Iowa 1247, 286 N. W. 526 (1939), the Supreme Court of Iowa considered the extent of a statutory power to "modify" an award made under a workmen's compensation statute. The Iowa court held that the power to "modify" included the power to increase an award from 10 weeks' compensation to 27 weeks' compensation.

The authority to "modify" tax assessments includes the power to increase the assessments substantially. *McGoldrick Lumber Co.* v. *Benewah County*, 54 Idaho 704, 35 P. (2d) 659 (1934). The power to "modify" a city charter includes the power to extend the city limits into outlying areas. *Wiley* v. *Corporation of Bluffton*, 12 N. E. 165 (S. C. Ind. 1887). And the power of a court to "modify" a judgment includes the power to set aside a judgment for one party with a direction to enter judgment for the other party. *Randall* v. *Osborne*, 162 App. Div. 186, 177 N. Y. S. 691.

The court below ignored such broad judicial constructions of "modify" as we have just cited. To support its own highly restricted view of the word, it cited only one judicial decision, *Linn* v. *Linn*, 242 Ala. 688, 8 So. (2d) 187

(1942). (680.) That case, when analyzed, lends no support whatever to the decision below. *Linn* v. *Linn* involved an application in a lower court to set aside a decree of divorce. The lower court was empowered by an equity rule to "*grant* or overrule said application *or modify* said decree." The very same rule provided that "no appeal will lie from such order unless it *modifies* the decree." After the lower court had entered an order *granting* the application to set aside the decree, an appeal was attempted. The Supreme Court of Alabama very logically held that the appeal would not lie, saying: "When Rule 62 includes a modification *along with* granting or overruling, it must have been intended to convey a different idea from them." (8 So. (2d) at 188.)

Thus, contrary to the ruling of the court below, *Linn* v. *Linn* is no precedent whatever for restricting the scope of Piedmont's application. In actual fact, the decision in *Linn* v. *Linn* strongly supports the present position of Piedmont and the Board. It emphasizes the basic principle that the word "modify" (or any word, for that matter) must be construed *in the context in which it is used. The court below ignored the whole context in which Piedmont used its "catch all" clause and the word "modification."*

Since the power to "modify" gives to *courts* broad power to make changes as the *courts* see fit, then surely Piedmont's request for "modification" gave the *Board* broad power to make changes in the specified routes as the *Board* saw fit. The Board, unlike the courts, is an administrative agency charged primarily with the duty of serving the public interest. In this capacity, the Board is not bound by the technical niceties of pleading and procedure which may apply to private litigants in the courts. *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134. Differences between administrative bodies and civil courts, both in origin and function, are basic. Mr. Justice Frankfurter adequately summarized the differences in the *Pottsville* case, *supra*, when he said:

> "Perhaps the most striking characteristic of this movement has been the investiture of administrative

agencies with power far exceeding and different from the conventional judicial modes for adjusting conflicting claims—modes whereby interested litigants define the scope of the inquiry and determine the data on which the judicial judgment is ultimately based. Administrative agencies have power themselves to initiate inquiry, or, *when their authority is invoked to control the range of investigation in ascertaining what is to satisfy the requirements of the public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for transportation, communication and other essential public services. These differences in origin and function preclude wholesale transplantation of the rules of procedure, trial and review which have evolved from the history and experience of courts.*" (309 U. S. at 142, 143)

A proper application of this principle can lead only to the conclusion that the Board had a sound and reasonable basis for finding Piedmont to be an applicant for the routes awarded.

Most important of all, Piedmont's application, as amplified by its "catch all" clause, must be construed in the light of the circumstances in which it was used. Justice Holmes aptly stated in *Towne* v. *Eisner*, 245 U. S. 418, that, "A word is not a crystal, transparent and unchanged; *it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.*" The court below wholly failed to apply this principle. Indeed, it selected, from the thousands of pages in this record, one sentence in Piedmont's testimony, and then twisted that sentence out of its logical meaning. (681.)

Piedmont specifically applied for the many routes and services which have been described. Its "catch all" clause sought "*such modification of such routes as the Board may find public convenience and necessity require,*" and also sought plenary relief under section 401 of the Act. Nowhere in this case did Piedmont in any way abandon or limit the all-inclusiveness of this request. Practically every

other application in the proceeding contained, in varying phraseology, a clause of similar import and intendment. Many examples of what had come to be known before the Board as the "catch all" clause may be found in this proceeding. (665-670.) Whatever the variations in individual expression, these clauses had come to have a well-defined meaning when used in proceedings before the Board; and this meaning renders resort to dictionaries and judicial decisions unnecessary.

The purpose of these clauses was to inform the Board, and any rival applicants, that the applicants making use of the clauses were applicants for any routes which might be awarded in a pending proceeding, whether or not such routes should correspond to the routes proposed by the applicants or any of them. In the present case, prior to the hearing, the Board's Examiners explicitly advised all parties to the case that use of the usual "catch all" clauses was proper "for the purpose of enabling the Board to grant a certificate to a point or points not specifically named in the application." (671.) That State fully recognized this meaning in the "catch all" clauses, is shown by State's reliance upon its own "catch all" clause in the original argument before the Board. (551.)

Before the present case came to hearing the Board itself had considered such "catch all" clauses and had given clear notice to all concerned that it would construe these clauses liberally in the light of the facts of each case. In the *North Atlantic Routes Case*, 6 C.A.B. 319, the Board had decided that three routes should be established across the continent of Europe. Giving a broad interpretation to the "catch all" clauses in various applications, the Board had transposed routes freely in the public interest. American Export, which had specifically applied only for a route across *central* Europe, was awarded a route across *northern* Europe. Pan American, which had specifically applied only for routes across *northern* Europe and across *southern* Europe, was awarded a route across *central* Europe. TWA, which had specifically applied for a route across *central*

Europe, was awarded a route across *southern* Europe. The Board went to great lengths in a unanimous opinion on this point to show that the "catch all" clauses of these various carriers in fact contemplated the awards which were made. (6 C.A.B. at 345-350.)

The Board has frequently considered such "catch all" clauses, and has given many practical examples as to whether a particular enlargement or change in a specific route pattern would be found as a fact to be within the scope of the clause. Thus in the *Rocky Mountain States Case*, 6 C.A.B. 695, the Board held that the inclusion, in the certificate issued to Summit Airways, of service to Salt Lake City, Utah, as a terminal point, was appropriate although this point did not appear on any of Summit's proposed routes and its inclusion involved an extension from Evanston, Wyoming, the most westerly point specifically proposed by Summit.

So also, in the *North Central Case*, 7 C.A.B. 639, Iowa Airplane Co. applied specifically only for routes emanating out of Des Moines, Iowa to other points which were *within the state of Iowa*. Nevertheless the Board found that service was required on routes extending from Des Moines as far north as Minneapolis/St. Paul, Minnesota, as far northwest as Huron, South Dakota, and as far west as North Platte, Nebraska. Under all of the circumstances of that case the Board found that Iowa Airplane Co., by virtue of its "catch all" clause, was an applicant for these routes, and the Board certificated the company to serve these routes even though most of the route mileage lay outside the state of Iowa.

On the other hand, the Board held in the *Panagra Terminal Investigation Case*, 4 C.A.B. 670, that an extension of Panagra's routes over some 1,200 miles from the Canal Zone to some terminal point in the United States was too great a change to be deemed a modification of its existing route structure. Similarly, in the *West Coast Case*, 6 C.A.B. 961, it held that the application of Los Angeles Airways, specifically proposing service out of Los Angeles to

points no farther north than Bakersfield and Santa Maria, was not broad enough to justify its selection under its "catch all" clause for routes extending hundreds of miles north to Medford, Oregon.

The foregoing examples clearly show that Piedmont's "catch all" clause, regardless of its precise wording, had a well-defined meaning in the proceeding before the Board. It served notice on all concerned that Piedmont wished to be considered as a candidate for any routes and services which the Board might find required. This being so, the application with its "catch all" clause formed a sound and reasonable basis for the Board's finding that Piedmont was in fact an applicant for the routes awarded.

The Board's order consolidating the many applications in this proceeding put all parties on notice that the Board intended to make a full study of air transportation in a vast area of the United States. In order to evolve an orderly and sound air transport system in the region, it was necessary that a route pattern be established consonant with the public convenience and necessity, that the qualifications of all applicants be considered together, and that the best qualified applicants be selected for the operation of the routes.

In an area case which involves the establishment of new local service, such as that provided by Piedmont, there are particularly compelling reasons why the Board should have reasonable freedom of action. Local-feeder services are still very much in the experimental stage and must be supported by substantial mail-pay subsidy. When establishing such services, the Board is vitally interested in securing the best possible experimental conditions. Of necessity it must first determine the best possible route pattern and then select the applicant which offers most in the public interest.

Whether a particular application with its "catch all" clause is an application for a route found required by the Board, is a question which must be determined by the Board on the basis of all the *facts* of record. That the question is

one of fact and not of law is clearly indicated by the Board decisions cited above and by the case of *W. R. Grace & Co. v. Civil Aeronautics Board*, 154 F. (2d) 271. In the latter case the Circuit Court of Appeals for the Second Circuit held that there was no requirement *of law* that a written application contain a substantially accurate point-by-point description of the routes to be certificated. There the court further held that the written consent of a carrier to serve a route determined to be necessary is the legal equivalent of a full dress application for such route. On rehearing, the court said:

> "But we adhere to the view that a *consent* by a carrier to a 401 (h) extension proceeding begun by the Board is the *legal equivalent of a petition for the same* extension initiated by the carrier." (154 F. (2d) at 287)

The solution of this question of fact in each case must be based upon factors such as the nature of the entire proceeding, the length of the mileage of the extended service, the amount of additional capital required to operate it, and the operating problems to be encountered. No fixed value can be assigned to any of these factors, and their individual weight and aggregate effect necessarily involve the exercise of expert judgment based on specialized knowledge and experience in a field which Congress has entrusted to the Board. In the exercise of its judgment, the Board expressly found as follows:

> "Piedmont's application, when viewed in the light of all pertinent factors, shows that this carrier was, within the meaning of Section 401(d), an applicant for the routes awarded it." (616)

This finding cannot be set aside by the Court. The case falls squarely within the rule announced by this Court in the case of *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80:

> "If the action rests upon an administrative determination—an exercise of judgment in an area which Con-

> gress has entrusted to the Agency—of course it must not be set aside because the reviewing Court might have made a different determination were it empowered to do so." (318 U. S. at 94)

State contended below that the Board's action, in regarding Piedmont as an applicant for the routes in question, denied State fair notice and hearing before the Board. The court below did not subscribe to this contention, and properly so. State had actual, specific notice that Piedmont was an active competitor for a substantial part of the route system involved. It had further notice, from Piedmont's "catch all" clause and from the nature of the proceeding, that Piedmont was a competitor for such other services as the Board might find required. State had a full opportunity at the hearing to present any evidence regarding itself and Piedmont which it might deem appropriate. This was "fair play." If State failed to see the play, that was only because it failed to look.

The decision of this Court in *Market Street Ry. Co.* v. *Railroad Commission*, 324 U. S. 548, makes it clear that State has no real grievance with respect to the notice and hearing afforded it before the Board. In that case the street railway company had notice only in the most general terms that an investigation was being commenced into certain matters, including "the reasonableness of rates and charges". After a hearing the commission reduced the company's rates and the company appealed on the ground that it had not been afforded proper notice. This contention was rejected by this Court, as follows:

> "We find that the company had reasonable notice that its rates were under attack and was not denied opportunity to be heard thereon. *We can well understand how counsel's attention became diverted to more sharply contested aspects of the case.* But even if a more convincing showing were made that the company had relevant evidence to be heard, we find no adequate excuse for the failure to offer it in the proceeding. No offer was rejected, no request for time to

obtain such evidence was denied. *A misapprehension by a litigant of the steps which its best interests require during a trial may be appealing grounds for a plea to the discretion of the hearing tribunal for another chance, but it is not grounds for our interference as a denial of constitutional rights.*" (324 U. S. 558, 559)

Upon the foregoing we submit that Piedmont was, beyond any question of doubt, an applicant before the Board for the routes certificated to it. The Board's finding to this effect was premised on substantial grounds, and should be sustained by this Court.

POINT II.

The Board clearly has the power to include in a certificate the obligation to serve points which the applicant did not ask to serve in its written application. It was error for the court below to rule otherwise.

Assuming, without conceding, that Piedmont's application did not request operations to the few points west of the Appalachians which were not included in its specific route proposals, nevertheless the Board was not thereby precluded from requiring service to these points. The decision below would prevent the Board from requiring such service and would thereby frustrate the fundamental purposes of the Act.

The Act provides that upon the appropriate findings, the Board may issue a certificate authorizing "the whole or any part of the transportation covered by the application". Nowhere in the Act is there found any provision which prohibits the Board from adding to the certificate the obligation to serve points not covered by the application. On the contrary, Section 401 (f) provides that "there shall be attached to the exercise of the privileges granted by the certificate . . . such reasonable terms, conditions and limitations *as the public interest may require.*" The term "public interest" is defined elsewhere in the Act as being

synonymous with "public convenience and necessity". (Section 2 of the Act).

This Court has held, under similar provisions of the Motor Carrier Act, that the Interstate Commerce Commission has clear power to include in a certificate authority for service substantially greater than the carrier had asked, and to many points the carrier had not requested. Chicago, St. Paul, Minneapolis and Omaha Ry. Co. v. U. S., 322 U. S. 1. The lower federal courts, with the exception of the court below, have consistently followed this Court's decision. In the present case, the court below completely ignored section 401 (f) of the Act; it ignored the decision of this Court in *Chicago, St. Paul, Minneapolis and Omaha Ry. Co. v. U. S., supra;* and it ignored the decisions of other federal courts. Indeed, the court below said that this was "a question not hitherto posed before any other court!" (682). It then ruled that the Board had no power whatever to add to a certificate points for which no application had been filed. (683). This was gross error.

The result of the decision below would be that after an investigation over a period of years had demonstrated a public need for air transportation from Cincinnati, Ohio to Charlottesville, Virginia, along with many other points, and after one or more applicants had been found fit, willing and able to perform satisfactory service in the area, all applications would have to be rejected and the investigation begun all over again because the applicants who proposed to serve Cincinnati did not propose to serve Charlottesville and those who proposed to serve Charlottesville did not propose to serve Cincinnati.

It was to prevent such a ridiculous result that Congress made express provision in the Act that the Board should not be bound to issue a certificate upon terms in form and substance as proposed by an applicant, but might add thereto such terms and condition as the public interest might require. Section 401(f) of the Act provides that:

> ". . . there shall be attached to the exercise of the privileges granted by the certificate. . . . such reason-

able terms, conditions and limitations as the public interest may require".

What could be more reasonable in the public interest than to condition the privilege of operations to points requested upon the assumption of the obligation to extend the service to other points which the Board finds to need the service, and which the Board finds the applicant fit and able to serve?

Any doubt which might otherwise exist that the Board has this power was laid to rest by the decision of this Court in the case of *Chicago, St. Paul, Minneapolis and Omaha Ry. Co.* v. *United States, supra.*

That case arose under Part II of the Interstate Commerce Act, known as the Motor Carrier Act, particularly under Sections 207(a) and 208(a) thereof. Section 207(a), like Section 401(d) of the Civil Aeronautics Act, empowered the Commission to issue a certificate, "authorizing the whole or any part of the operations covered by the application." Section 208(a), like Section 401(f) of the Civil Aeronautics Act, provides that there shall "be attached to the certificate such reasonable terms, conditions and limitations as the public convenience and necessity may from time to time require . . ."

In that case the motor carrier applicant had specifically withdrawn from its application its request for numerous points. It had no "catch all" clause in its application, and at the hearing it expressly stated that it was unwilling to serve the many points in question. Yet the Commission found a need for the service and issued a certificate authorizing service to the points in question. The applicant accepted the certificate and competitors appealed.

On review this Court said:

> "The question of law in the case is whether the Commission on its finding need for such service had power to authorize service of intermediate points *not asked for by the applicant.* The applicant has accepted and is defending the grant, but the competing rail carriers complain of it." (322 U. S. at 3)

This Court then held that under the authority conferred by Section 208(a)

> "It is clear that the Commission on the facts found had power to include in the authorization *provision for service greater than the carrier had asked.*" (322 U. S. at 4)

Under the principle announced by this decision the Board had clear power to include in Piedmont's certificate "provision for service greater than the carrier had asked." In the above-quoted decision this Court upheld the Commission's award even though the motor carrier applicant had withdrawn i s application to serve the many poi' s in question, even though it had no "catch all" clause, and even though it stated its unwillingness to serve the additional points. The Board's award to Piedmont did not go nearly so far. Piedmont, unlike the motor carrier applicant, had a "catch all" clause in its application. Piedmont, unlike the motor carrier applicant, expressly stated at the hearing its willingness to serve other points not specifically named in its application. (470). Obviously the Board had legal power under such circumstances to award Piedmont its certificate.

Other federal courts, with the exception of the court below, have consistently followed and applied the sound principle announced by this Court in *Chicago, St. Paul, Minneapolis and Omaha Ry. Co.* v. *U. S., supra.* See *Boulevard Transit Lines* v. *U. S.*, 77 F. Supp. 594 (1948); *Inland Navigation Co.* v. *U. S.*, 76 F. Supp. 567 (1948); *McCracken* v. *U. S.*, 47 F. Supp. 444.

In the *McCracken* case, *supra,* the Interstate Commerce Commission had again issued to a motor carrier a certificate authorizing it to render service at certain points even though it was unwilling to render such service. A three-judge court affirmed the decision of the Commission and said in its opinion

> "Congress, in order to render the elimination of excrescences more easy and the building of the transpor-

tation structure more symmetrical, *by section 208 gave the Commission power to prescribe 'terms, conditions, and limitations as the public convenience and necessity may require.'* * * *

"* * * they could place such terms in the certificate as were required by public necessity to make the operations conducted thereunder consistent with operations carried on by others and convenient for the public. * * **the Commission could add such terms or conditions, even if he were unwilling.*

"The plaintiffs misconceive their rights in the matter. The only ground of attack could be that the public necessity and convenience were not served. The Commission found to the contrary."

This Court has also upheld the broad powers of the Interstate Commerce Commission in the related case of *Alton Railroad Co.* v. *United States*, 315 U. S. 15. There the Commission had awarded a "grandfather" certificate to a motor carrier engaged in automobile "drive-away" service in fourteen states. Although the applicant had operated only an infrequent service to many of the states *and had in fact served only one or two cities in such states*, the Commission certified the carrier to serve *every city in most of the states for which application had been made.* On review this Court held the award to be within the broad powers and discretion of the Commission, saying this "judgment is for the administrative experts, not the courts." (315 U. S. at 22).

With respect to the Board's power to certificate service to points for which no application has been made, the provisions of the Civil Aeronautics Act are similar in wording to those provisions of the Motor Carrier Act upon which this Court relied in *Chicago, St. Paul, Minneapolis and Omaha Ry. Co.* v. *U. S.*, *supra*. In the Civil Aeronautics Act and in the Motor Carrier Act, the basic criterion is "public interest" or its counterpart, "public convenience and necessity". An interpretation of this term "public interest", as employed in these two statutes, establishes that

the Board has powers at least as great as the Interstate Commerce Commission to award routes and points for which no application has been made.

Section 2 of the Civil Aeronautics Act defines the "public interest" in the broadest possible terms and envisions an expansion of air service wherever feasible. The Motor Carrier Act, on the other hand, was enacted at a time when the motor carrier industry was seriously overexpanded, and was designed to bring stability through contraction and retrenchment if necessary. The basic public interest of the Civil Aeronautics Act is much more dynamic than that of the Motor Carrier Act. If the Motor Carrier Act authorizes the Interstate Commerce Commission to certificate service which the applicant has expressly stated its unwillingness to provide, and this Court has so held, then certainly the broader objectives of the Civil Aeronautics Act empower the Board to issue certificates for route segments and points as to which no application was made.

Therefore, assuming *arguendo* that Piedmont was not an applicant for the points for which it did not specifically apply, the Board nevertheless had full power under the Act to award Piedmont the certificate in question.

POINT III.

Piedmont was fit, willing and able to provide the service authorized. The Board's finding to this effect was erroneously reviewed by the court below, and was improperly set aside by that court.

The Board, in its original opinion and again in its supplemental opinion, found Piedmont to be fit, willing and able to provide the service authorized. (565, at 907, 614). This finding was premised on *substantial* evidence, indeed on overwhelming evidence, of Piedmont's outstanding qualifications. The Board itself attested to these qualifications:

> "Piedmont demonstrated superior operational experience acquired in the successful conduct of diversified

> aviation activities, and possessed physical facilities and a well-rounded organization with key personnel familiar with operating conditions in the area involved." (611).

Piedmont proved at the hearing that it was fit, willing and able to operate at least 5,763 route miles, the mileage specifically sought under its amended application. It demonstrated a proper organizational basis, a proper plan for the conduct of service in the manner authorized by the Board, and adequate financing. (283-290; 359-413, 414, 415, 439, 440, 446, 447). Furthermore, Piedmont proved conclusively that it had the experience and "know-how" to operate service over mountainous terrain. (289, 292, 445, 466).

All this proof most assuredly gave the Board "substantial evidence" from which to find Piedmont fit, willing and able to operate the service authorized. Piedmont's proof related to *at least 5,763 route miles.* The Board awarded Piedmont *only 1,700 route miles.*

In fact, Piedmont's fitness, willingness and ability were so apparent that even State's counsel conceded to the Board that they had been established. When asked by the Chairman of the Board the specific question whether State was taking the position that Piedmont was not capable of operating the routes to be certificated, counsel stated:

> "We are taking the position that both State and Piedmont are fit and able; it's a question of which has demonstrated in this record to be more fit, willing and able." (607)

Having taken this position, State had no standing in court to challenge the Board's finding, because section 1006 (e) of the Act provides:

> "No objection to an order of the Board shall be considered by the court unless such objections shall have been urged before the Board * * *".

Despite this clear provision of the Act, the court below considered State's argument that Piedmont was not fit, willing and able. This in itself was error. The court then reviewed the Board's finding of Piedmont's fitness, willingness and ability, and ruled that this finding was arbitrary, capricious and without any evidence to support it. (684). This is perhaps the most glaring error committed by the court. For the court to set itself up as having ability superior to that of the Board as to what attributes, characteristics and special skills shall constitute evidence of an applicant's fitness and ability to operate an air transportation system over a given route, is to negative the whole purpose of Congress to entrust this field to the specialized experience and expert knowledge of the Board.

In the first place, it is to be observed that the court based its conclusion upon a most limited and restricted view of the evidence and a positive non-legal standard adopted by itself as to what evidence the Board may consider on the point. There has never been any question but that there was adequate evidence to establish Piedmont's fitness, willingness and ability to conduct operations serving all of the certificated points in Virginia and North Carolina, where the major portions of the routes are located.

The real basis of the holding below is not that there was a total absence from the record of Piedmont's fitness, willingness and ability, but that, because Piedmont had not specifically asked in its application to serve Louisville and the other points west of the Appalachians, the Board could not properly consider any evidence offered by Piedmont of its fitness, willingness and ability in a case where service to those points was to be included in the certification. This is made clear by the fact that the court below, in its opinion, did not find absence of evidence of fitness and ability of Piedmont generally, but only with respect to the points "west of the Appalachians and over mountainous terrain." (684).

This finding by the court is all the more remarkable because there is not a scintilla of evidence in the record that operations extending to Cincinnati and Louisville required any other, different or additional qualifications by the operator than were required for operations to Roanoke, Virginia; Princeton, Bluefield, Beckley and Charleston, West Virginia; Asheville, North Carolina; and Bristol and Knoxville, Tennessee; service to all of which was specifically proposed by Piedmont. A glance at any appropriate topographical map demonstrates that service to all of these latter points involves operations over "mountainous terrain," such as that which the court, without any foundation in the evidence, seemed to regard as a formidable hurdle for air transportation to surmount. Where has the court acquired the expert knowledge to enable it to judge whether or not the technical ability to cope with elevations of four to five thousand feet is insufficient to cope with elevations a thousand or so feet higher? The court was obviously transcending its proper sphere of authority when it assumed to characterize as absurd the position taken by the Board's counsel that the same fitness and ability which would qualify an applicant to operate from Hagerstown to Norfolk would also qualify it to operate from Jacksonville to Miami. (685)

Instead of pointing out wherein it considered Piedmont's evidence of fitness, willingness and ability sufficient to show its ability to operate the routes certificated, the court below concentrated on a single statement of Piedmont's counsel. (684). This statement pointed out that one of Piedmont's routes followed the Shenandoah Valley and crossed the Blue Ridge Mountains only at a point where they were very low. The court below would have us believe that this was a fair characterization of all of the operations concerning which Piedmont offered any evidence of its fitness and ability. Reference to the record where this statement is set forth (553) makes it clear that this remark of counsel was directed only to a single route proposed by Piedmont, that from Columbia, South Carolina to Washington,

and was not intended to be offered as a description of Piedmont's entire proposed route system. The remark was introduced by the statement at the top of the cited page:

> "I would like to discuss first the proposed route from Columbia, South Carolina to Winston-Salem, and from Winston-Salem to Washington." (553)

The court below overlooked and failed to notice the following pertinent items of evidence put into the record by Piedmont which were most certainly considered by the Board to be relevant to Piedmont's fitness and ability to conduct operations to points west of the Appalachians and over mountainous terrain:

1. As shown by flight logs of only four of its pilots, Piedmont had conducted at least 28 actual flights from Winston-Salem, N. C., to points west of the Appalachians, to wit, Cincinnati, Ohio; Huntington-Ashland, Charleston and Beckley, West Virginia; and Middlesboro-Harlan, Kentucky. (292).

2. In addition to the flights just mentioned, the same pilots had flown at least 93 actual flights from Winston Salem to points such as Bristol, Asheville, Knoxville and Roanoke, all of which involved operations over mountainous terrain. (292).

3. Furthermore, Piedmont had conducted very extensive charter flights from its base at Winston Salem (289, 466); and Cincinnati and Chicago were among the most frequent destinations (445).

Piedmont introduced compelling proof that it was fit, willing and able to render service on at least 5,763 route miles, a substantial part of that mileage being over mountainous terrain. The Board, in its expert judgment, twice found Piedmont fit, willing and able to operate the mere 1,700 route miles awarded to it, and recognized Piedmont's outstanding qualifications. State conceded to the Board that Piedmont was fit, willing and able to operate the routes

awarded. Yet the court below set aside the Board's finding on the ground that "there was no evidence of Piedmont's appropriate qualification for the awarded routes." This ruling clearly overstepped the bounds of permissible judicial review. It was nothing more than a continuation of the court's original erroneous conclusion that Piedmont was not an applicant for the routes awarded. The Board's finding was entirely proper and must be sustained by this Court.

POINT IV.

The court below was correct in holding that it had no power to order the Board to issue a certificate to State.

The court below held that it lacked power to order the Board to issue a certificate to State. (686). State's cross-petition for a writ of certiorari (No. 159), which was granted by this Court together with the petitions of Piedmont and the Board, raised only this one point, contending that the court below should have directed the Board to issue a certificate to State. This contention has no merit.

Upon the basis of the points discussed previously in this brief, Piedmont submits that this Court will surely reverse the court below on the principal points in the case, and will affirm the Board's award to Piedmont. In this event there will be no reason for this Court to consider the single point raised by State's petition for certiorari. Once the Board's award to Piedmont is confirmed, as it should be, State can not possibly take the position before this Court that it *too* should be certificated by the Board.

However, in the event this Court should fail to affirm the Board's award to Piedmont, the Court should *not* direct the Board to issue a certificate to State and to rescind Piedmont's certificate (as urged by State). Any action toward a rescission of Piedmont's certificate, and the issuance of a certificate to State, would involve serious questions of public interest. It would involve a cessation of service by Piedmont over its entire system. It would raise vital questions with respect to mail payments, and a host of

other serious problems. *Such questions affecting the public interest would be peculiarly within the province of the Board to consider and decide.*

The evidence in this case was submitted in June 1945, four and one-half years ago. Since then circumstances have changed greatly in the airline industry. If the case should be remanded to the Board, therefore, the Board should be left free to consider these changed circumstances and to work out the best possible solution in the public interest. A direction to the Board to issue a certificate to State would preclude this sound result.

The court below was unquestionably correct when it considered itself bound by the decision of this Court in *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134. In that case this Court carefully distinguished the respective functions of the courts and administrative agencies, saying:

> "The Commission's responsibility at all times is to measure applications by the standard of 'public convenience, interest, or necessity.' The Commission originally found respondent's application inconsistent with the public interest because of an erroneous view regarding the law of Pennsylvania. The Court of Appeals laid bare that error, and, in compelling obedience to its correction, exhausted the only power which Congress gave it. *At this point the Commission was again charged with the duty of judging the application in the light of 'public convenience, interest, or necessity.'*" (309 U. S. at 145)

Accordingly, this Court reversed an order of mandamus which would have required the Commission to consider the application solely on the basis of the record "as originally made and in accordance with the opinions" of the Court of Appeals.

That decision is controlling here. If the Board committed any error, it is the function of the court only to lay bare the error and to remand the case to the Board for further proceedings as the basic policy of the Act may

require. This Court has made it crystal clear that on a remand to the Board State would have no vested right to a certificate.

State apparently realizes that the relief it requests would be contrary to the decision of this Court in the *Pottsville* case. It urges, therefore, that that decision has been superseded by section 10(e) of the Administrative Procedure Act, which section provides that a reviewing court shall have power to "compel agency action unlawfully withheld." However, this provision of section 10(e) was merely intended to codify the existing law with respect to judicial review. It does not in any way supersede the decision of this Court in the *Pottsville* case.

That the above-quoted part of section 10(e) was merely intended to codify existing law is shown by its legislative history. The Senate Judiciary Committee Print of June 1945 had this to say:

> "A restatement of the scope of review, as set forth in subsection (e), is obviously necessary lest the proposed statute be taken as limiting or unduly expanding judicial review. 'The objections to judicial review have been generally not to its availability but to its scope' (Final Report, Attorney General's Committee, p. 80). It is not possible to specify all instances in which judicial review may operate. *Subsection (e), therefore, seeks merely to restate the several categories of law subject to judicial review*".
>
> *Administrative Procedure Act, Legislative History*, 79th Congr., 2d Sess., Sen. Doc. No. 248, at p. 39

Therefore, the Administrative Procedure Act has not changed the *Pottsville* decision one whit.

State contends that any action remaining to the Board would be ministerial and not discretionary. Hence, State argues, the court should issue an order in the nature of mandamus directing the Board to issue a certificate to

State. This is exactly the same argument which was rejected by this Court in the *Pottsville* case. In that case the Court of Appeals had actually issued an order of mandamus to the Federal Communications Commission, and this Court vacated the order. State overlooks the fact that the Board would have *continuing discretion to select the successful applicant* in the light of the facts as they might appear on remand. The Board has never yet exercised its discretion to select State, and the court can not compel it to.

Section 401(d)(2) of the Act provides that when application is made for a *temporary* certificate (the type involved here), the Board "*may*" issue such a certificate upon finding that the public convenience and necessity require the service and that the applicant is fit, willing and able. In contrast, section 401(d)(1) provides that in the case of an application for a *permanent* certificate, the Board "*shall*" issue the certificate when it makes the prescribed findings. The use of the word "may" in section 401(d)(2) emphasizes the fact that on any remand of this case the Board would have discretionary power to hold further proceedings as the public interest might require. Contrary to State's argument, State would not be entitled to a certificate as a matter of law.

CONCLUSION.

The Board found as a fact that Piedmont was an applicant for the routes awarded. This finding was based on substantial grounds, and should be sustained by this Court. Furthermore, assuming that Piedmont was not an applicant for some of the points awarded, the Board had full power to include in Piedmont's certificate authorization to serve these points.

The Board also found as a fact that Piedmont was fit, willing and able to provide the service. This finding is fully substantiated by the evidence, and it too should be sustained by this Court.

The Board's award to Piedmont should therefore be affirmed.

Respectfully submitted,

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No. 159

In the Supreme Court of the United States

OCTOBER TERM, 1949

PIEDMONT AVIATION, INC., PETITIONER

v.

STATE AIRLINES, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE CIVIL AERONAUTICS BOARD

The petition seeks review of the judgment setting aside an order of the Civil Aeronautics Board, review of which is sought by the petition for writ of certiorari filed in *Civil Aeronautics Board* v. *Piedmont Aviation, Inc.*, No. 157. The questions which the petition filed in the instant case presents are similar to those presented in No. 157. The Government believes that the petition should be granted for the reasons set forth in support of the petition filed in No. 157.

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Solicitor General.

EMORY T. NUNNELEY, JR.,
General Counsel, Civil Aeronautics Board.

JULY 1949.

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